

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Wyoming: Approval of State Coal Combustion Residuals Permit Program	)	Docket ID No:
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COMMENTS OF WESTERN ORGANIZATION OF RESOURCE COUNCILS, POWDER
RIVER BASIN RESOURCE COUNCIL, WYOMING OUTDOOR COUNCIL, SIERRA CLUB
WYOMING CHAPTER, CENTER FOR BIOLOGICAL DIVERSITY, ENVIRONMENTAL
INTEGRITY PROJECT, AND EARTHJUSTICE

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I. INTRODUCTION

The United States Environmental Protection Agency’s (“EPA”) decision on Wyoming’s coal ash permitting program (“Wyoming program” or “program”) will have direct and long-term effects on the health of Wyoming residents and the water resources they depend on for drinking, agriculture, recreation, and more. Coal combustion residuals (“CCR” or “coal ash”) is the toxic waste left after burning coal. Coal ash contains arsenic, chromium, lead, lithium, radium, and other heavy metals, which have been linked to numerous types of cancer, heart and thyroid disease, respiratory illness, reproductive failure, and neurological harm.

Despite existing oversight by Wyoming’s Department of Environmental Quality (“WDEQ”), all of Wyoming’s coal-fired power plants are contaminating the state’s groundwater with hazardous chemicals, and have been doing so for years, according to the industry’s own data. This pollution impacts the many Wyoming residents who rely on groundwater wells for drinking water, and those who fish, farm, and recreate near the state’s coal ash dumps. Unless this contamination is stopped and cleaned up correctly, human health and the environment will continue to be harmed by the pollution’s long-term effects. Comprehensive and effective regulation of coal ash in Wyoming is therefore paramount. EPA should not—and cannot, under federal law—delegate its authority over coal ash regulation to Wyoming unless the record demonstrates that Wyoming is implementing, and will in the future implement, a coal ash program at least as protective as federal rules require.

This is not the case in Wyoming. CCR landfills and CCR surface impoundments in the state have been historically regulated by Wyoming under solid waste regulations and water quality regulations, respectively. Wyoming now seeks approval of the CCR permitting program that was promulgated in 2022. However, as detailed in these comments from Western Organization of Resource Councils, Powder River Basin Resource Council, Wyoming Outdoor Council, Sierra Club Wyoming Chapter, Center for Biological Diversity, Environmental Integrity Project, and Earthjustice (“Commenters”), Wyoming has allowed and is continuing to allow every coal-fired power plant in the state to flagrantly violate federal coal ash regulations that are critical to public safety and resource protection. Moreover, in the three years that the Wyoming program has been in effect, the state has already committed and allowed violations of the state regulations by indefinitely delaying the exercise of its permitting authority.

In its proposed partial approval of Wyoming’s program (“Proposed Approval”),¹ EPA ignores the robust, clear evidence of rampant noncompliance at Wyoming’s coal ash dumps that has persisted for many years under the state’s watch. That evidence includes *EPA’s own findings* that multiple sites have failed to comply with critical safeguards in the federal requirements. Additional evidence from the owners and operators of Wyoming’s coal ash dumps makes clear this problem is widespread. EPA’s sudden attempt under the Trump administration to look the other way from this glaring noncompliance is unlawful; EPA must consider this evidence in its final decision.

¹ Wyoming: Approval of State Coal Combustion Residuals Permit Program, 90 Fed. Reg. 42,347 (Sept. 2, 2025) (“Wyoming Proposed Approval”).

It would also be unlawful for EPA to approve Wyoming’s program because it is based on regulations that are plainly weaker than federal coal ash rules. Congress made clear that EPA cannot approve a state permitting program unless it is “at least as protective” as the federal rules, and Wyoming’s program fails to satisfy that critical requirement. In addition, the state program’s significant barriers to public participation and enforcement violates fundamental mandates of the Resource Conservation and Recovery Act (“RCRA”).

EPA’s decision to approve Wyoming’s program is likely to cause irreparable harm. EPA rarely revisits state program delegations. In fact, RCRA requires EPA to review state CCR programs only once every 12 years.² In addition, Commenters are aware of no instances in which EPA has withdrawn approval of a state permitting program under RCRA. Approval of the Wyoming program will also create a shield to federal enforcement and oversight while WDEQ continues to act in dereliction of its duty to clean up and prevent coal ash pollution and protect public health and the state’s water resources.

Therefore, EPA must carefully and closely evaluate Wyoming’s program *now* and get this decision right the first time —by denying Wyoming’s deficient permitting program. The health, wellbeing, and environment of Wyoming residents, including Commenters’ members, depends on it.

II. FACTUAL BACKGROUND

Coal ash—the toxic waste left after burning coal for electricity—is one of the largest industrial waste streams in the United States. It is a mix of hazardous pollutants, metals, carcinogens, and neurotoxins—including arsenic, boron, cobalt, chromium, lead, mercury, radium, selenium, and thallium—that cause a wide range of harms to human health and the environment. The coal industry has contaminated aquifers, streams, and lakes at hundreds of sites across the country with these hazardous pollutants.

According to industry’s own 2024 data, approximately 50 million cubic yards of coal ash are stored at the 19 coal ash dumps in Wyoming that have been regulated since 2015 under EPA’s first CCR regulations (“2015 CCR Rule”).³ These 19 dumps are located at four coal plants—Dave Johnston, Jim Bridger, Laramie River, and Naughton—and include three coal ash landfills and 16 coal ash surface impoundments.⁴

At least 13 older coal ash dumps are located at these same four coal plants and at the Osage plant, which does not have any coal ash dumps regulated under the 2015 CCR Rule. These older dumps are regulated for the first time under EPA’s 2024 CCR regulations (“2024

² 42 U.S.C. § 6945(d)(1)(D)(i)(I).

³ Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities, 80 Fed. Reg. 21,302 (Apr. 17, 2015) (“2015 CCR Rule”).

⁴ Earthjustice, *Toxic Coal Ash in Wyoming: Addressing Coal Plants’ Hazardous Legacy*, <https://earthjustice.org/feature/coal-ash-states/wyoming> (updated Oct. 1, 2025).

Legacy Rule”).⁵ The amount of coal ash sitting in these older dump sites is currently unknown because their owners and operators have yet to report this information.

Approximately 500 people live within three miles of the four plants with coal ash units covered under the 2015 rule.⁶ The Naughton plant has the largest surrounding population, with over 250 people within three miles. While fewer people live near the other power plants, the sites are near groundwater wells that are used domestically, for public water systems, or for irrigation. Directly adjacent to Jim Bridger are six active wells used for public drinking water; within three miles of Dave Johnston are 60 active wells used domestically; and within three miles of Laramie River are over 70 active wells used domestically or for irrigation.⁷ Because no government entity regularly tests private wells for pollution, the people who rely on private wells near coal ash dumps likely would not know if they were being poisoned by coal ash contaminants unless they tested the water themselves.

Wyoming’s coal ash dumps have been contaminating groundwater for decades. All facilities show evidence of groundwater contamination from the ash. At Naughton and Jim Bridger, the levels of contamination are particularly high. According to a 2022 analysis of industry-reported groundwater data, Naughton and Jim Bridger are two of the four most contaminated power plant sites in the country. Among many other hazardous contaminants, groundwater at the power plants has levels of lithium 242 and 164 times the safe drinking water standard, respectively.⁸ The owners of all four power plants covered by the 2015 CCR Rule have begun the cleanup process, with three of them selecting specific remedy approaches in 2020 or 2021. However, the remedies have been slow and ineffective.⁹ As a result, groundwater monitoring from 2024 continues to reveal contaminant levels exceeding groundwater protection standards at all four facilities for numerous pollutants, including arsenic, molybdenum,

⁵ Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Legacy CCR Surface Impoundments, 89 Fed. Reg. 38,950 (May 8, 2024) (“2024 Legacy Rule”).

⁶ 2018–2022 American Community Survey data as evaluated via a preserved version of EJScreen, available at <https://pedp-ejscreen.azurewebsites.net/>, where Community Reports were generated with a three mile radius for all four facilities.

⁷ Groundwater well data derived from Chung-Yi Lin et al., *A Database of Groundwater Wells in the United States* (Mar. 2024), <https://www.hydroshare.org/resource/8b02895f02c14dd1a749bcc5584a5c55/>.

⁸ Excerpt of Earthjustice & EIP, *Poisonous Coverup: The Widespread Failure of the Power Industry to Clean Up Coal Ash Dumps* (Nov. 3, 2022) at tbl. A4, https://earthjustice.org/wp-content/uploads/coal-ash-report_poisonous-coverup_earthjustice.pdf (“Poisonous Coverup”) (attached).

⁹ Water & Environmental Technologies, Remedy Selection Report Ash Pond – Dave Johnston Power Plant Glenrock Wyoming (Oct. 2020), <https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/ccr/dave-johnston/ash-pond/groundwater/remedy-selection-report.pdf>; Water & Environmental Technologies, Remedy Selection Report Ash Pond FGD Pond 1 – Naughton Power Plant Kemmerer Wyoming (Apr. 2021), <https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/ccr/naughton/fgd-pond-1/groundwater/Remedy%20Selection%20Report.pdf>; Excerpt of AECOM, Groundwater Remedy Selection Report Laramie River Station, Wheatland, WY (July 2020), https://www.basinelectric.com/files/pdf/Coal_ash/LRS-Gourndwater-Remedy-Selection-Report_9July2020.pdf (attached).

cadmium, selenium, lithium, and radium.¹⁰ Units at these facilities likely violate the 2015 CCR Rule because they were closed in place with ash in contact with groundwater¹¹ and they have insufficient groundwater monitoring networks.¹²

Coal ash poses a threat to Wyoming's groundwater and the populations that rely on those water resources, now and in the future. These communities deserve a coal ash regulatory program that protects their health and the environment by requiring owners and operators to timely and effectively remedy the serious harm caused by their coal ash mismanagement and prevents future harm through safe operation and closure of leaking toxic coal ash dump sites.

III. OVERVIEW OF FEDERAL COAL ASH REGULATIONS

A. Federal CCR Rulemakings

RCRA obligates and authorizes EPA to regulate CCR units. Pursuant to that authority, EPA promulgated the first national CCR regulations in 2015 and additional regulations in 2018, 2020, and 2024, collectively codified at 40 C.F.R. Part 257 ("Federal CCR Rules").¹³

¹⁰ Haley & Aldrich, 2024 Annual Groundwater Monitoring And Corrective Action Report Ash Pond Dave Johnston Power Plant, at 5 (Jan. 2025), <https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/ccr/dave-johnston/ash-pond/groundwater/annual-reports/DJ%20Ash%20Pond%202024%20GWMCA%20Report%20F.pdf>; Haley & Aldrich, 2024 Annual Groundwater Monitoring And Corrective Action Report FGD Pond 1 Naughton Power Plant, at 3 (Jan. 2025), <https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/ccr/naughton/fgd-pond-1/groundwater/annual-groundwater-reports/N%20FGD%201%202024%20GWMCA%20Report%20F.pdf>; Haley & Aldrich, 2024 Annual Groundwater Monitoring And Corrective Action Report FGD Pond 1 Jim Bridger Power Plant, at 4 (Jan. 2025), <https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/ccr/jim-bridger/fgd-pond-1/groundwater/annual-groundwater-reports/JB%20FGD%201%202024%20GWMCA%20Report%20F.pdf>; Excerpt of AECOM, 2024 Annual Groundwater Monitoring and Corrective Action Report Laramie River Station, at tbl. 1 (Jan. 31, 2025), https://www.basinelectric.com/_files/pdf/Coal_ash/2025-Final-LRS-2024-Annual-GMCA-Report_01312025.pdf (attached).

¹¹ MWH, Jim Bridger Power Plant Flue-Gas De-Sulfurization (FGD) Pond 1 Closure Design Report, at 9 (Sept. 2015), <https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/ccr/jim-bridger/fgd-pond-1/closure/PI Closure%20Plan.pdf>. ("...groundwater elevations in the Almond formation in the vicinity of FGD Pond 1 vary between 6660 and 6670 feet. Based on past geotechnical borings, the bottom clay liner pond floor is located at approximately 6664 feet in the deepest part of the pond.").

¹² Excerpt of Poisonous Coverup at App. B, p. 44 (attached).

¹³ See generally 2015 CCR Rule, 80 Fed. Reg. 21,302; Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Amendments to the National Minimum Criteria (Phase One, Part One), 83 Fed. Reg. 36,435 (Jul. 30, 2018) ("Phase One, Part One Rule"); Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; A Holistic Approach to Closure Part A: Deadline To Initiate Closure, 85 Fed. Reg. 53,516, (Aug. 28, 2020) ("Part A Rule"); Hazardous and Solid Waste Management System: Disposal of CCR; A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments, 85 Fed. Reg. 72,506 (Nov. 12, 2020) ("Part B Rule"); 2024 Legacy Rule, 89 Fed. Reg. 38,950.

EPA promulgated its 2015 CCR Rule in response to overwhelming evidence that unsafe coal ash disposal poses serious risks to human health and the environment.¹⁴ In support of its rule, EPA pointed to the toxic and hazardous contaminants contained in coal ash that are associated with serious health and environmental effects, including arsenic, cadmium, chromium, lead, mercury, selenium, and thallium.¹⁵ EPA documented “cancer in the skin, liver, bladder and lungs,” “neurological and psychiatric effects,” “cardiovascular effects,” “damage to blood vessels,” and “anemia” among the risks to humans associated with exposure to coal ash contaminants.¹⁶ EPA further found that the improper management of coal ash across the country led to groundwater contamination, air pollution, and catastrophic spills of ash into rivers, lakes, streams, and neighboring communities when dams or other structural components of landfills and impoundments failed.¹⁷

For certain coal ash landfills and surface impoundments, the 2015 CCR Rule established minimum criteria, including location restrictions, design requirements, operating requirements, and closure and post-closure care requirements.¹⁸ Key protections include semi-annual groundwater monitoring requirements that trigger corrective action obligations at lined impoundments and closure obligations at unlined ones if groundwater protection standards are exceeded; location restrictions to keep coal ash units out of unstable areas, wetlands, fault areas, seismic zones, and the groundwater table; structural stability criteria for impoundments; and comprehensive closure and post-closure requirements.¹⁹ Any unit that fails to comply with these requirements is deemed an “open dump” and subject to closure.²⁰

Multiple parties challenged the 2015 CCR Rule in court, including industry actors, who asserted that the rule went too far; and environmental and public health organizations, who asserted that the rule was deficient in certain ways. These challenges were consolidated, and in its 2018 decision *Utility Solid Waste Activities Group v. EPA* (“USWAG”), the U.S. Court of Appeals for the D.C. Circuit (“D.C. Circuit”) sided with environmental challengers in holding that under RCRA’s Section 4004(a) protectiveness standard:

- Delaying closure of unlined coal ash ponds until groundwater contamination was detected was unacceptable given the high probability of such contamination;
- Excluding inactive coal ash ponds at inactive power plants—termed “legacy” ponds—from regulation was unlawful given the risks they present; and

¹⁴ See, e.g., 2015 CCR Rule, 80 Fed. Reg. at 21,302 (“The available information demonstrates that the risks posed to human health and the environment by certain CCR management units warrant regulatory controls.”), 21,320 (“[T]he record is clear that current management of these wastes can present, and in many cases has presented, significant risks to human health and the environment.”), 21,451 (“EPA concludes that current management practice of placing CCR waste in surface impoundments and landfills poses risks to human health and the environment . . .”).

¹⁵ *Id.* at 21,311, 21,449–51.

¹⁶ *Id.* at 21,451.

¹⁷ *Id.* at 21,449, 21,456–57.

¹⁸ See generally 40 C.F.R. Part 257.

¹⁹ *Id.*

²⁰ 40 C.F.R. § 257.1(a); 2015 CCR Rule, 80 Fed. Reg. at 21,468.

- Allowing inadequately lined ash ponds was unacceptable.²¹

The D.C. Circuit instructed EPA to strengthen the 2015 CCR Rule by requiring closure of all unlined impoundments, regulating legacy ash ponds, and requiring inadequately lined CCR surface impoundments to close.²²

After an extended delay, EPA took action to regulate legacy coal ash ponds in 2024.²³ In the 2024 Legacy Rule, EPA eliminated the regulatory exemption for legacy ponds and imposed regulatory safeguards on inactive landfills.²⁴ In so doing, EPA noted that the risks from legacy ponds and inactive landfills are “at least as significant” as the substantial public health and environmental risks posed by unlined surface impoundments and landfills already regulated by the 2015 CCR Rule.²⁵

EPA issued other coal ash regulations between 2015 and 2024 largely in response to industry requests.²⁶ In 2018, EPA finalized “Phase One, Part One” of a wide-ranging regulatory proposal, which allowed for the use of “alternate performance standards,” weakened groundwater protection standards for four pollutants, and extended deadlines by which leaking ponds had to close.²⁷ In August 2020, EPA promulgated its “Part A Rule” that, among other things, extended the deadline by which some coal ash units had to close and revised its alternate closure provision to include an enormous loophole enabling utilities to avoid their retrofit-or-close deadline for many additional years.²⁸ In November 2020, EPA finalized the “Part B Rule,” which created an additional loophole allowing dangerous, unlined impoundments to qualify as lined impoundments under the 2015 CCR Rule through so-called “alternate liner demonstration[s]”.²⁹ These rules flouted the D.C. Circuit’s conclusion in *USWAG* that delaying cleanup of leaking ponds was unacceptable, as well as its clear instruction that EPA must strengthen the 2015 CCR Rule to require closure of all unlined impoundments.³⁰

In response to several industry challenges claiming that EPA had engaged in improper rulemaking, including in its 2020 Part A Rule, the D.C. Circuit recently affirmed several fundamental aspects of the 2015 CCR Rule. First, it held that the rule, “standing on its own,

²¹ *Util. Solid Waste Activities Grp. v. EPA*, 901 F.3d 414, 430, 432 (D.C. Cir. 2018) (“*USWAG*”).

²² *Id.* at 429–30, 432.

²³ See generally 2024 Legacy Rule, 89 Fed. Reg. 38,950.

²⁴ *Id.* at 38,950.

²⁵ *Id.* at 38,951, 39,046.

²⁶ See, e.g., Utility Solid Waste Activities Group, Petition for Rulemaking to Reconsider Provisions of the Coal Combustion Residuals Rule and Request to Hold in Abeyance Challenge to Coal Combustion Residuals Rule (May 12, 2017), https://www.epa.gov/sites/production/files/2017-06/documents/final_uswag_petition_for_reconsideration_5.12.2017.pdf; AES Puerto Rico LP, Petition for Rulemaking to Reconsider Provisions of the Coal Combustion Residuals Rule and Request to Hold in Abeyance Challenge to Coal Combustion Residuals Rule (May 31, 2017), https://www.epa.gov/sites/production/files/2017-06/documents/2017.05.31_aes_puerto_rico_lps_petition_for_reconsideration_and_rulemak.pdf.

²⁷ Phase One, Part One Rule, 83 Fed. Reg. 36,435–36.

²⁸ Part A Rule, 85 Fed. Reg. at 53,516–17.

²⁹ Part B Rule, 85 Fed. Reg. at 72,506.

³⁰ *USWAG*, 901 F.3d at 429–30.

makes clear that operators [of coal ash units] cannot close their surface impoundments with groundwater leaching in and out of the unit and mixing with the coal residuals.”³¹ Second, the court explained that requiring operators of coal ash units “to discuss ‘the engineering measures taken’ before installation of the cover system ‘to ensure that the groundwater had been removed from the unit,’ and to describe the steps taken to control water and waste flow in and out of the surface impoundment” is “a straightforward application . . . of the 2015 [CCR] Rule.”³² Third, the court confirmed that the 2015 CCR Rule plainly covers coal ash “settling tanks” as well as coal ash units that stopped receiving ash before October 2015 but continued to contain liquids and ash after that date.³³ Finally, the court affirmed EPA’s position that the addition of coal ash to a closing unit is not a “beneficial use” of that ash as defined under the 2015 CCR Rule.³⁴

B. The Water Infrastructure Improvements for the Nation Act

EPA established the 2015 CCR Rule to be “self-implementing” and largely enforced through citizen suits.³⁵ At the time of the rule’s promulgation, RCRA Subtitle D neither authorized EPA to directly implement or enforce minimum national criteria for solid waste disposal facilities, nor required states to adopt, implement, or enforce EPA’s minimum criteria.

In 2016, Congress passed the Water Infrastructure Improvements for the Nation Act (“WIIN Act”).³⁶ The WIIN Act “amended RCRA Subtitle D to allow the EPA to approve State permitting programs ‘to operate in lieu of [EPA] regulation of coal combustion residuals units in the State,’ provided those programs are at least as environmentally protective as the existing (or successor) EPA regulations.”³⁷ Specifically, the WIIN Act provides:

(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 for regulation by the State of coal combustion residuals units that are located in the State that, after approval by the Administrator, will operate in lieu of regulation of coal combustion residuals units in the State by—

(i) application of part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title); or

(ii) implementation by the Administrator of a permit program under paragraph (2)(B).

(B) [] Not later than 180 days after the date on which a State submits the evidence described in subparagraph (A), the Administrator, after public notice and an

³¹ *Elec. Energy, Inc. v. EPA*, 106 F.4th 31, 41 (D.C. Cir. 2024).

³² *Id.*

³³ *Id.* at 42.

³⁴ *Id.* at 43.

³⁵ 2015 CCR Rule, 80 Fed. Reg. at 21,309, 21,311; *see also* 42 U.S.C. § 6972.

³⁶ Pub. L. No. 114-322, 130 Stat. 1628 (2016) (codified at 42 U.S.C. § 6945(d)).

³⁷ *USWAG*, 901 F.3d at 426 (quoting 42 U.S.C. § 6945(d)(1)(A)).

opportunity for public comment, shall approve, in whole or in part, a permit program or other system of prior approval and conditions submitted under subparagraph (A) if the Administrator determines that the program or other system requires each coal combustion residuals unit located in the State to achieve compliance with—

(i) the applicable criteria for coal combustion residuals units under part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title); or

(ii) such other State criteria that the Administrator, after consultation with the State, determines to be at least as protective as the criteria described in clause (i).³⁸

Since the WIIN Act's passage, EPA has approved primacy applications from three states; Oklahoma,³⁹ Georgia,⁴⁰ and Texas;⁴¹ issued a proposed approval to North Dakota;⁴² and denied Alabama's primacy application.⁴³

IV. APPROVING WYOMING'S PROGRAM WOULD VIOLATE THE WIIN ACT AND BE ARBITRARY AND CAPRICIOUS BECAUSE WYOMING'S REGULATIONS LACK IMPORTANT ASPECTS OF, AND INCLUDE WEAKER STANDARDS THAN, THE FEDERAL CCR RULES.

EPA cannot grant primacy to Wyoming unless it determines that the state's program is "at least as protective as" the requirements in the Federal CCR Rules.⁴⁴ As part of its determination, EPA proposes to evaluate the Wyoming program concerning "permitting requirements, requirements for compliance monitoring authority, requirements for enforcement authority, and requirements for intervention in civil enforcement proceedings," among other program aspects.⁴⁵ A review of Wyoming's program, even accepting EPA's Proposed Approval,

³⁸ 42 U.S.C. § 6945(d)(1).

³⁹ *See generally* Oklahoma: Approval of State Coal Combustion Residuals Permit Program, 83 Fed. Reg. 30,356 (Jun. 28, 2018).

⁴⁰ *See generally* Georgia: Approval of State Coal Combustion Residuals Permit Program, 85 Fed. Reg. 1,269 (Jan. 10, 2020). In February 2024, EPA sent a letter to Georgia's Environmental Protection Division raising concerns that the state's incorrect interpretation of closure performance standards in the 2015 CCR Rule may mean the state's CCR permitting program is less protective than the Federal CCR Rules. *See generally* Letter from Jeananne M. Gettle, EPA, to Jeffrey Cown, GAEPD, Re: Plant Hammond Ash Pond 3 (Feb. 13, 2024) (attached).

⁴¹ *See generally* Texas: Approval of State Coal Combustion Residuals Permit Program, 86 Fed. Reg. 33,892 (Jun. 28, 2021).

⁴² *See, generally*, North Dakota: Approval of State Coal Combustion Residuals Permit Program, 90 Fed. Reg. 20,985 (May 16, 2025)

⁴³ *See generally* Alabama: Denial of State Coal Combustion Residuals Permit Program, 89 Fed. Reg. 48,774 (Jun. 7, 2024) ("Alabama Primacy Denial").

⁴⁴ 42 U.S.C. § 6945(d)(1)(B)(ii); *see also* *USWAG*, 901 F.3d at 426 (explaining that EPA can approve state permitting programs under the WIIN Act "provided those programs are at least as environmentally protective as the existing (or successor) EPA regulations").

⁴⁵ *See, e.g.*, Wyoming Proposed Approval, 90 Fed. Reg. at 42,349.

makes clear that it lacks key definitions from, and includes weaker standards than, the Federal CCR Rules.

A. Wyoming’s Program Lacks Definitions Found in the Federal CCR Rules That Are Critical to Protecting Human Health and the Environment.

Among the federal regulations that will not be incorporated into Wyoming’s program, according to EPA’s Proposed Approval, are all the amendments made in the 2024 Legacy Rule.⁴⁶ As a result, newly regulated surface impoundments, landfills, and other CCR Management Units⁴⁷ in Wyoming will remain subject to the 2024 Legacy Rule. However, the 2024 Legacy Rule includes several amendments that apply to *all* CCR units, including those units for which EPA proposes to grant Wyoming primacy. Among these is the addition of definitions that clarify the meaning of terms critical to the effectiveness of activities taken pursuant to Federal CCR Rules. EPA’s proposal to approve Wyoming’s program without these new clarifying definitions fails to meet the statutory requirement that state programs be “at least as protective” as the Federal CCR Rules.

Among the definitions added by the 2024 Legacy Rule, which apply to regulatory safeguards for *all* CCR units, are those for “[i]nfiltration,” “[l]iquids,” and “[c]ontains both CCR and liquids.”⁴⁸ These clarifying definitions are directly responsive to persistent noncompliance issues that EPA has noted at coal ash dumps throughout the country, including Wyoming.

EPA proposed and ultimately adopted these definitions due to the repeated assertion by industry actors that the terms were significantly more limited than their plain meanings—an assertion that industry has relied on to justify unsafe CCR management practices.⁴⁹ For example, USWAG, an industry trade group, has repeatedly argued that the term “free liquids,” as used in the 2015 CCR Rule, does not include groundwater. Misconstrued in this manner, the requirement that “[f]ree liquids must be eliminated” when closing a surface impoundment with waste in place (40 C.F.R. § 257.102(d)(2)(i)) allows industry to illegally leave waste saturated in and contaminating groundwater in perpetuity.⁵⁰ Similarly, industry actors have asserted that

⁴⁶ *Id.* at 20,995 (referencing 2024 Legacy Rule, 89 Fed. Reg. at 38,985).

⁴⁷ CCR Management Units are defined as “any area of land on which any noncontainerized accumulation of CCR is received, is placed, or is otherwise managed, that is not a regulated CCR unit. This includes inactive CCR landfills and CCR units that closed prior to October 19, 2015, but does not include roadbed and associated embankments in which CCR is used unless the facility or a permitting authority determines that the roadbed is causing or contributing to a statistically significant level above the groundwater protection standard established under § 257.95(h).” 40 C.F.R. § 257.53.

⁴⁸ 2024 Legacy Rule, 89 Fed. Reg. at 39,100; 40 C.F.R. § 257.53.

⁴⁹ *See* Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy CCR Surface Impoundments, 88 Fed. Reg. 31,982, 32,026 (May 18, 2023).

⁵⁰ *See, e.g.,* USWAG, Comments on Proposed Decision: Proposed Denial of Alternative Closure Deadline for General James M. Gavin Plant, at 2–3, 7, 9–28, Docket ID No. EPA-HQ-OLEM-2021-0590-0054 (Mar. 25, 2022) (“USWAG Comments on Gavin Decision”) (attached). USWAG filed identical comments regarding proposed Part A decisions for the Clifty Creek, Spurlock, and Ottumwa plants. *See generally* USWAG, Comments on Proposed Decision: Proposed Denial of Alternative Closure Deadline for Clifty Creek Power Station, Docket ID No. EPA-HQ-OLEM-2021-0587-0044 (Mar. 25, 2022)

“infiltration,” as used in the Federal CCR Rules, only refers to the downward infiltration of precipitation into a CCR unit, not to the infiltration of groundwater from the sides and below. Relying on this false claim, USWAG has argued that the Rules’ mandate that a CCR unit close in a manner that will “[c]ontrol, minimize, or eliminate . . . post-closure infiltration of liquids” only applies to rainwater and requires no measures to address liquids infiltrating coal ash from any other source.⁵¹

In addition to making these assertions in various comments to EPA, several utilities and a coal industry trade association went so far as to claim before the D.C. Circuit that EPA had engaged in improper rulemaking by not adhering to industry’s unreasonably narrow and nonsensical construction of these key terms.⁵² And even though the D.C. Circuit agreed with EPA that the 2015 CCR Rule, and not any subsequent EPA action, requires the elimination and preclusion of groundwater from closing surface impoundments,⁵³ industry actors have continued to push these claims through other avenues. More recently, industry actors in the D.C. Circuit case argued in the Southern District of Ohio that EPA efforts to prevent owners and operators from closing impoundments with ash sitting in groundwater relied upon a new and improper “interpretation” of the 2015 CCR Rule. Here, the court granted EPA’s motion to dismiss and noted that industry was “flouting common sense” and asserting a reading of the 2015 CCR Rule that “is hopeless as a matter of text and purpose.”⁵⁴ Similarly, USWAG recently requested that EPA Administrator Zeldin take “immediate action” to resolve litigation over the 2024 Legacy Rule and voluntarily rescind its clarifying definitions of “liquids,” “infiltration,” and “contains both CCR and liquids.”⁵⁵ A letter to Administrator Zeldin from several coal companies, including Basin Electric Power Cooperative, owner of the Laramie River Station, makes an identical request.⁵⁶

Wyoming’s program incorporates the exact language of the Federal CCR Rule regarding closure and thus incorporates the same terms. Wyoming’s failure to include the clarifying definitions for these terms provided in the 2024 Legacy Rule—which are now codified in the Federal CCR Rules—leaves the terms vulnerable to intentional misconstruction and renders Wyoming’s program less protective than the federal program. As further discussed in Section V, the impact of this can be seen at both Jim Bridger and Naughton, where WDEQ issued closure permits for several CCR surface impoundments, even though their closure and post-closure plans

(attached), USWAG, Comments on Proposed Decision: Conditional Approval of an Alternative Closure Deadline for H.L. Spurlock Power Station, Docket ID No. EPA-HQ-OLEM-2021-0595-0026 (Mar. 25, 2022) (attached), and USWAG, Comments on Proposed Decision: Proposed Denial of Alternative Closure Deadline for Ottumwa Generating Station, Docket ID No. EPA-HQ-OLEM-2021-0593-0031 (Mar. 25, 2022) (attached).

⁵¹ USWAG Comments on Gavin Decision at 2 (attached).

⁵² See *Elec. Energy*, 106 F. 4th at 31.

⁵³ *Id.* at 40–41

⁵⁴ Opinion and Order, at 37, *Gavin Power, LLC v. EPA*, Case No. 2:24-cv-41 (S.D. Ohio Aug. 26, 2025) (attached).

⁵⁵ Letter from Daniel L. Chartier, USWAG Executive Director to Hon. Lee Zeldin, then-Nominee to be U.S. EPA Administrator (Jan. 16, 2025) (attached).

⁵⁶ See Letter from Jessica Bednarik, Duke Energy et al. to Hon. Lee Zeldin, then-Nominee to be U.S. EPA Administrator (Jan. 15, 2025) (requesting that EPA “[p]rioritize the expeditious approval of State CCR permit programs to operate in place of the federal rule”) (attached).

only address infiltration related to precipitation and fail to address the elimination of free liquids prior to closure in place.

B. The Wyoming Program's Post-Closure Care Requirements Are Less Protective than the Federal CCR Rules.

The Wyoming program fails to meet the standard prescribed in the WIIN Act because its post-closure care requirements are less protective than the Federal CCR Rules. Section 4(c)(iii) of Chapter 18 of the state regulations notes, "closure permits will be issued for a period that includes the time required to complete closure activities and a minimum thirty-year post-closure term."⁵⁷ However, the section also states:

The closure permit period will extend until the Administrator finds that facility closure is protective of human health and the environment consistent with the purposes of the Act. If, following receipt of documentation from the operator, the *Administrator determines that all closure and post-closure activities have been completed and closure is protective of human health and the environment, the permit shall be terminated* as specified in Chapter 1 of these rules.⁵⁸

Section 4(c)(iii) authorizes the Administrator to terminate the permit upon the request of the operator (with accompanying documentation) and upon determination that "all closure and post-closure activities have been completed and closure is protective of health and the environment." However, under the Federal CCR Rules, the post-closure period must be no shorter than 30 years, and there are no exceptions to this minimum length of time.⁵⁹ In fact, while the Federal CCR Rules prohibit shortening the 30-year post-closure period, they provide for a *mandatory indefinite extension of the period* if the owner or operator of the CCR is operating under assessment monitoring.⁶⁰ While Wyoming has incorporated this section by reference, Section 4(c)(ii) of Chapter 18 allows the Administrator to override this requirement. Further, Section 4(c)(ii) provides no specific criteria that owners or operators must meet to demonstrate that early closure is protective of health and the environment. In addition, there is no requirement for a certification of a professional engineer to be included in the "documentation." Consequently, the Wyoming provision of Chapter 18, Section 4(c) is not as protective as the Federal CCR Rules, which do not provide for any exceptions to the 30-year post-closure care period.

Furthermore, the length of the Federal CCR Rules' mandatory post-closure period is not arbitrary. The 30-year post-closure period is essential for protection of human health and the environment. EPA explained:

By not allowing the post-closure care period to be shortened, EPA better ensures that the final cover system will be properly maintained. In addition, a mandatory 30 year period ensures that if problems do arise with respect to a final cover system, the groundwater monitoring and corrective action provisions of the rule will detect

⁵⁷ 020-18 Wyo. Code R. § 18-4(c)(iii).

⁵⁸ *Id.* (emphasis added).

⁵⁹ 40 C.F.R. § 257.104(c)(1).

⁶⁰ *Id.* § 257.104(c)(2).

and address any releases from the CCR unit, at least during the post-closure care period.⁶¹

EPA also noted that a 30-year post-closure care period is necessary particularly for CCR units because the Federal CCR Rules afford owners and operators the flexibility to select alternative final cover systems.⁶² Pursuant to the WIIN Act, if the Wyoming program is different than the Federal CCR Rules, EPA may only approve the State requirements if “the Administrator, after consultation with the State, determines [the State criteria] to be at least as protective as the criteria described in clause (i).”⁶³ EPA has made no such determination, nor has it provided any basis for such a determination.

C. The Wyoming Program’s Location Restrictions Are Less Protective Than the Federal CCR Rules.

The Wyoming program fails to meet the standard prescribed in the WIIN Act because Chapter 16, Section 6(f)(i) renders the location criteria less stringent than the Federal CCR Rules. Under Section 6(f)(i), a CCR surface impoundment or landfill could be located “within the ordinary high water mark of intermittent rivers, streams, creeks, draws, coulees, or other natural drainages provided a by-pass ditch is installed capable of passing the 24-hour 100-year precipitation event.”⁶⁴ This provision is less stringent than the Federal CCR Rules, which require all new CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units to be constructed with a base that is located no less than five feet above the upper limit of the uppermost aquifer, or demonstrate that there will not be an intermittent, recurring or sustained hydraulic connection between any portion of the base of the CCR unit and the uppermost aquifer due to normal fluctuations in groundwater elevations.⁶⁵ Pursuant to the WIIN Act, if the Wyoming program is different than the Federal CCR Rules, EPA may only approve the State requirements if “the Administrator, after consultation with the State, determines [the State criteria] to be at least as protective as the criteria described in clause (i).”⁶⁶ EPA has made no such determination, nor has it provided any basis for such a determination.

D. The Wyoming Program Does Not Require Owners and Operators to Submit Permit Applications by a Date Certain.

The Wyoming program cannot meet the statutory requirement for approval because it fails to include permit application deadlines for most CCR landfills. EPA cannot therefore determine that the program “requires each coal combustion residuals unit located in the State to achieve compliance with” the Federal CCR Rules or state rules that are “at least as protective.”⁶⁷

In 2022, Wyoming promulgated Chapter 18, which incorporates most of the Federal CCR Rules (excluding the 2024 Legacy Rule) and requires owners and operators of CCR units to

⁶¹ 80 Fed. Reg. at 21,426.

⁶² *Id.*

⁶³ 42 U.S.C. § 6945(d)(1)(B)(ii).

⁶⁴ 020-18 Wyo. Code R. § 18-6(f)(i).

⁶⁵ 40 C.F.R. § 257.60(a).

⁶⁶ 42 U.S.C. § 6945(d)(1)(B)(ii).

⁶⁷ *Id.* § 6945(d)(1).

demonstrate compliance with the requirements of the regulations in their applications for permits or permit renewals. The requirements of Chapter 18 are not self-implementing and are only binding upon issuance of a permit.⁶⁸ Consequently, all CCR units currently operating without a Chapter 18 permit in Wyoming are not subject to the program's requirements. Since Wyoming has failed to issue a single CCR permit pursuant to Chapter 18, no landfill or impoundment is yet subject to the Chapter 18 requirements.

In Wyoming, CCR landfills operate under permits issued by the WDEQ Solid Waste Division, according to Solid Waste Rules promulgated in 1990.⁶⁹ Existing CCR surface impoundments operate under rules of multiple programs within the WDEQ Water Quality Division, promulgated in 1975.⁷⁰ The Water Quality Division does not require operating permits for CCR impoundments, but requires construction permits under the Water and Wastewater Program and discharge permits under the Wyoming Discharge Elimination System Program.⁷¹ CCR landfills and impoundments will presumably continue to operate under these authorities until WDEQ issues permits under Chapter 18 for either continued operation or closure.

In the Proposed Approval, EPA makes a fundamental error by asserting that existing CCR landfills must submit permit applications under Chapter 18 by a date certain. Substantially misconstruing Chapter 18, EPA states, “[e]xisting CCR landfills must submit a permit renewal application no later than 12 months prior to the expiration date of the facility’s existing solid waste permit.”⁷² EPA repeats this error in the Technical Support Document, stating “Chapter 18, Section 4 requires owners and operators of *all CCR units* to submit a complete permit application no later than twelve months prior to the expiration date of the facility’s existing permit or twelve months after the effective date of Chapter 18, whichever comes later, unless an alternate schedule is approved by the SHWD Administrator for good cause.”⁷³

Section 4(b) of Chapter 18, which governs “permit transition,” however, requires no such thing.⁷⁴ Section 4(b)(i) only imposes a deadline to apply for a renewal permit on “existing CCR landfills that are permitted under Chapter 3 of these rules that do not have a lifetime permit.”⁷⁵ Since the Solid Waste Rules require CCR landfill operating permits for the life of the facility, it is possible that some CCR landfills are operating under lifetime permits.⁷⁶ Consequently, according to Section 4(b), some existing CCR landfills may have no deadline for submitting a permit application. Furthermore, even for an existing CCR landfill without a lifetime permit, the deadline to submit a permit renewal application may be waived if “an alternative schedule is approved by the Administrator for good cause.”⁷⁷ “Good cause” is not defined in the rule, and

⁶⁸ See 020-18 Wyo. Code R. § 18-4.

⁶⁹ EPA, Technical Support Document for the Approval of Wyoming’s Coal Combustion Residuals Program, Docket ID No. EPA-HQ-OLEM-2025-0221-0048, at 5 (Aug. 2025) (“Technical Support Document”).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² 90 Fed. Reg. at 42,351.

⁷³ Technical Support Document at 8.

⁷⁴ 020-18 Wyo. Code R. § 18-4(b).

⁷⁵ *Id.* § 18-4(b)(i).

⁷⁶ 020-3 Wyo. Code R. § 3-2(c).

⁷⁷ 020-18 Wyo. Code R. § 18-4(b)(iii).

therefore could allow indefinite delays in permitting, even for CCR landfills that have regulatory deadlines.

For existing CCR surface impoundments, a separate problem exists. Section 4(b)(ii) requires all existing CCR surface impoundments to submit a new permit application “within twelve months of the effective date” of Chapter 18, which was August 19, 2022. This makes August 19, 2023, the deadline to submit a new permit application. However, EPA has confirmed that WDEQ has not issued any CCR permits under Chapter 18.⁷⁸ In addition, Commenters’ WDEQ public records request indicates that there are no pending permit applications under review for the continued operation of any surface impoundment in Wyoming at this time, more than two years past the deadline to submit applications, primarily because WDEQ has indefinitely delayed the permitting process.⁷⁹ Further, while Chapter 18 clearly requires all CCR surface impoundments, closed or operating, to obtain a new permit, Wyoming’s Narrative Statement does not discuss whether closed or closing surface impoundments must obtain a Chapter 18 permit. If Wyoming does not require CCR surface impoundments that have closed or are in the process of closing to obtain permits, the program fails to be as protective as the Federal CCR Rules. Consequently, EPA must clarify that requirement in any final approval. Lastly, the deadline in Section 4(b)(iii) suffers from the same uncertainty as the deadline for CCR landfills and grants the Administrator authority to establish an alternate schedule for an undefined “good cause.”

In sum, neither the State nor EPA can claim that the Wyoming program requires existing CCR landfills to achieve compliance with the requisite protective rules. EPA need not go beyond the four corners of the application to arrive at this conclusion. There is simply no certainty that the Wyoming program will ever require all CCR landfills in the state to be subject to the protective requirements mandated by the WIIN Act.

EPA cannot approve the Wyoming program without correcting this substantial gap. In the event that EPA approves the Wyoming program, the only protection afforded Wyoming residents is the WIIN Act’s assurance, as EPA stated in the Technical Support Document, that “[t]he deadline to obtain a CCR permit through the Department does not exempt a Wyoming-based facility from meeting any earlier deadlines required by 40 CFR part 257.”⁸⁰ Thus, unless and until CCR units in Wyoming are permitted under Chapter 18, the Federal CCR Rules remain applicable and enforceable, even if the EPA approves the Wyoming program.

Issuance of timely CCR permits with enforceable standards at every CCR unit in the state is fundamental to a protective state permit program. Here, Wyoming lacks the authority to require all owners and operators to submit timely CCR permit applications for their CCR units. Chapter 18 requires some units to be permitted by a date certain, but not all. A facility that wants to avoid both state scrutiny and the expenditure of time and resources required to complete a

⁷⁸ Wyoming Proposed Approval, 90 Fed. Reg. at 42,355.

⁷⁹ See Email from WDEQ to Ozaeta re: Public Records Request (Oct. 29, 2025) (attached). As detailed in Section VI, Commenters submitted a public records request to WDEQ seeking, among other documents, Chapter 18 permit applications for all CCR landfills and CCR surface impoundments but only received a permit application for one CCR landfill and several WDEQ letters granting pauses on permitting applications for most, if not all, of the CCR units in the state.

⁸⁰ Technical Support Document at 8.

permit application can delay the process indefinitely. Clearly, this fails the WIIN Act's requirement to ensure that each CCR unit in the state achieves compliance with sufficiently protective regulations.

E. The Wyoming Program Does Not Require the WDEQ Administrator to Determine Whether a Permit Application Achieve Compliance with the Federal Requirements or Equally Protective State Requirements.

Chapter 18 requires permit applicants for CCR units to demonstrate compliance with standards substantially similar to the Federal CCR Rules. Section 4(d)(i) of Chapter 18 states, “[t]he permit application shall contain a completed permit application form and a written report demonstrating compliance with the applicable standards and criteria set forth in Sections 5 through 15 of this Chapter.”⁸¹ The Wyoming program, however, does not require the WDEQ Administrator to determine that such demonstrations actually constitute compliance with the regulations. Pursuant to W.S. § 35-11-502(h):

The administrator shall review the application and unless the applicant requests a delay advise the applicant in writing within ninety (90) days from the date of determining the application is complete, that a proposed permit is suitable for publication under subsection (j) of this section, that the application is deficient or that the application is denied. All reasons for deficiency or denial shall be stated in writing to the applicant. All items not specified as being deficient at the end of the first ninety (90) day period shall be deemed complete for the purposes of this subsection. If the applicant submits additional information in response to any deficiency notice, the administrator shall review such additional information within thirty (30) days of submission and advise the applicant in writing if a proposed permit is suitable for publication under subsection (j) of this section, that the application is still deficient or that the director has denied the application.⁸²

Thus, Wyoming's program allows for the approval of a permit, no matter how deficient, if WDEQ fails to act within 90 days. Section 4(d) of Chapter 18 must be revised to explicitly require the Administrator to determine whether a proposed permit complies with the applicable standards before rendering a decision on a proposed permit.

F. The Wyoming Program's Lifetime Operating Permits Contravene the WIIN Act's Mandate that Each CCR Unit Achieve Compliance with Standards “at Least as Protective as” the Federal CCR Rules.

The WIIN Act requires that a state CCR permit program must be “at least as protective as” the Federal CCR Rules. This holds true even after a state program has been approved. If EPA revises the federal CCR standards, as it is now proposing to do, the WIIN Act directs the Agency to review approved state programs within three years of those revisions to evaluate whether the state program “continues to ensure that each [CCR] unit located in the state” is complying with

⁸¹ 020-18 Wyo. Code R. § 18-4(d)(i).

⁸² In contrast, Section 4(f)(ii)(B)(II) of Chapter 18, which governs permit amendments, requires the Administrator to “determine whether a proposed permit amendment complies with applicable standards.” *Id.* § 18-4(f)(ii)(B)(II).

requirements at least as protective as those set forth in the revised federal CCR standards.⁸³ If EPA finds that the state program does not do so, EPA is to withdraw approval of the state program, which is not to be restored unless and until the state has “corrected the deficiencies” in its program.⁸⁴

Under Chapter 18, Wyoming grants lifetime operating permits to CCR landfills and surface impoundments. Section 4(c)(i) states, “Permits for new CCR units or existing CCR surface impoundments seeking a permit under this Chapter will be issued for the operating life of the facility through post-closure.”⁸⁵ Section 4(c)(ii) states that renewal permits for CCR landfills will also be issued for the operating life of the facility.⁸⁶ However, non-expiring permits are not permissible under the WIIN Act. Permits must include provisions allowing them to be re-opened, or expire and be renewed, to incorporate any changes to the state program necessary to ensure that the CCR unit “continues to achieve compliance” with standards “at least as protective as” those in any revised federal CCR standards.⁸⁷

This problem is not hypothetical. The 2024 Legacy Rule significantly expanded the scope of the CCR protections of the 2015 CCR Rule. Looking forward, additional revisions to the federal CCR standards are expected. RCRA directs EPA to “review[] and, where necessary, revise[]” all regulations implementing the statute every three years.⁸⁸ Congress intended regulations implementing RCRA to reflect updates to technology and science that improve environmental protection.⁸⁹ As such, the federal CCR standards will need further revision going forward to incorporate advances in science and technology that lessen CCR’s impact on the environment.⁹⁰

In sum, EPA must not approve the Wyoming program because lifetime operating permits are inconsistent with the WIIN Act’s mandate, which states that CCR permit programs must ensure that all CCR units meet standards “at least as protective as” changing federal CCR standards, and Wyoming’s program grants permits for a CCR unit’s operating life. Wyoming must modify its program to provide that permits for CCR units be re-opened, or expire and be

⁸³ 42 U.S.C. §§ 6945(d)(1)(D)(i)(II), 6945(d)(1)(D)(ii)(I).

⁸⁴ *Id.* § 6945(d)(1)(E).

⁸⁵ 020-18 Wyo. Code R. § 18-4(c)(i).

⁸⁶ *Id.* § 18-4(c)(ii).

⁸⁷ *See* 42 U.S.C. §§ 6945(d)(1)(D)(i)(II), (d)(1)(D)(ii)(I), (d)(1)(E).

⁸⁸ *Id.* § 6912(b); *see also id.* § 6907(a) (directing EPA to publish suggested guidelines for solid waste management “from time to time,” including guidelines setting forth what constitutes open dumping).

⁸⁹ *See, e.g., id.* § 6902(a)(9)–(10) (declaring that the objectives of RCRA “are to promote the protection of health and the environment and to conserve valuable material and energy resources by ...promoting a national research and development program for ... new and improved methods of ...environmentally safe disposal of nonrecoverable residues” and by “promoting the demonstration, construction, and application of solid waste management ... systems which preserve and enhance the quality of air, water, and land resources”); *id.* § 6907(a)(1) (mandating that guidelines for solid waste management are to “provide a technical and economic description of the level of performance that can be attained by various *available* solid waste management practices ... which provide for the protection of public health and the environment.”) (emphasis added).

⁹⁰ *See Appalachian Voices v. McCarthy*, 989 F. Supp. 2d 30, 45 (D.D.C. 2013) (concluding that RCRA § 2002(b) imposes “a continuing obligation on the EPA to review and revise its regulations”).

renewed, to incorporate any changes to the state program necessary to ensure that all CCR units continue to achieve compliance with standards at least as protective as those in any revised federal CCR standards.

G. Wyoming's Proposal to Grant Lifetime Operating Permits Is Inconsistent with Federal Environmental Policies.

In addition to being inconsistent with the WIIN Act, lifetime operating permits for CCR units run contrary to fundamental principles enshrined in many federal and state environmental laws. Granting a permit for life is exceedingly rare for State and Federal environmental permits. Air permits, water discharge permits, and hazardous waste permits all expire and must be renewed.⁹¹ There is good reason for that: our nation's environmental laws – and in particular, RCRA – require that standards be periodically updated to reflect our changing understanding of pollution's health impacts and changing technologies that reduce damage to the environment,⁹² and those updates would have little effect if the permits governing polluting facilities were not adjusted accordingly. In fact, EPA regulations consistently require that environmental permits be updated to incorporate revised standards.⁹³ This is true of waste permits just as it is for air and water permits. For example, permits for hazardous waste facilities must be reviewed every five years and are to be modified⁹⁴ if, among other reasons, “the standards or regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued.”⁹⁵

⁹¹ See, e.g., 40 C.F.R. § 70.6(a)(2) (limiting the term of Clean Air Act (“CAA”) operating permits to five years, except for solid waste incineration units, for which the term may not exceed 12 years); *id.* § 72.69(b)(1) (limiting the term of CAA Acid Rain permits to five years); *id.* § 122.46(a) (limiting the terms of Clean Water Act (“CWA”) National Pollutant Discharge Elimination System permits to five years); *id.* § 270.50(a) (limiting the term of RCRA hazardous waste permits to ten years).

⁹² See, e.g., 42 U.S.C. § 7409 (requiring EPA to review and, if necessary to protect public health or welfare, revise National Ambient Air Quality Standards (“NAAQS”) every five years, in consultation with a committee of scientific experts); *id.* § 7411(g)(4) (requiring EPA to revise New Source Performance Standards (“NSPS”) that set the technological floor for pollution controls if a governor identifies a demonstrated technology and shows that the existing NSPS does not reflect the pollution control that technology can achieve); 33 U.S.C. § 1313(c) (requiring states to review and, if appropriate, revise water quality standards at least every three years to ensure those standards protect the public health and enhance water quality).

⁹³ See, e.g., 40 C.F.R. § 70.1(b) (requiring all sources subject to CAA Title V operating permits to “have a permit to operate that assures compliance by the source with all applicable requirements;”); *id.* § 70.2 (defining “applicable requirement” to mean, *inter alia*, any periodically updated NSPS that sets a technological floor for air pollution controls for particular pollutants and facilities; any periodically updated standard setting emission limits for facilities releasing hazardous air pollution under Section 112 of the CAA; and any periodically updated NAAQS limiting the concentration of particular air pollutants that may be in the air in a given area); *id.* § 122.44(l)(2)(ii) (providing that reissued NPDES permits under the CWA may not “be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified”).

⁹⁴ *Id.* § 270.50(d) (providing that a RCRA permit for a hazardous waste facility is to be reviewed five years after issuance and modified “as necessary,” consistent with 40 C.F.R. § 270.41); *id.* § 270.41(a)(3).

⁹⁵ 40 C.F.R. § 270.41(a)(3).

RCRA’s directives that standards be updated to reflect advances in science and technology, and that documents governing waste management be revised to incorporate those updated standards, also apply to solid waste.⁹⁶ EPA regulations governing solid waste management indicate that EPA neither contemplated nor intended that permits for solid waste facilities would not expire.⁹⁷ Wyoming’s proposal to grant permits for life to CCR units contravenes the fundamental principle underlying our nation’s environmental laws—including RCRA—that permits for polluting facilities must be revised to incorporate updated standards reflecting scientific and technological advances to reduce harm to public health and the environment.

A requirement that permits be periodically renewed is also critical to ensure compliance with applicable requirements, in that it directs the state regulatory agency, as well as the public, to review the facility’s compliance record and other management issues. Periodic evaluation of the facility is required to ensure that facilities are in compliance with their permits and have adequately conducted monitoring, maintenance, remediation, reporting, and closure activities, as well as posted adequate bonds. The permit reissuance process presents a critical opportunity for state regulators and the public to examine issues essential to the safe operation of the facility. During this process, the facility must be required to provide current information on its operations and compliance. Since a permit is the critical instrument ensuring the facility’s compliance with environmental laws, all permits must have fixed terms to reflect updated conditions and remain tailored to a facility’s individual operations. During regular permit reissuance, regulators and the public have the necessary opportunity to evaluate a facility’s past performance and raise issues

⁹⁶ See 42 U.S.C. § 6944(a) (allowing solid waste disposal sites to be classified as sanitary landfills and not open dumps “only if there is no reasonable probability of adverse effects on health or the environment from disposal of solid waste at such facility”); RCRA § 2002(b), 42 U.S.C. § 6912(b) (directing EPA to “review[] and, where necessary, revise[]” all RCRA implementing regulations every three years); RCRA § 1008, 42 U.S.C. § 6907 (stating that, “from time to time,” EPA is to publish guidelines for solid waste management that “provide a technical and economic description of the level of performance that can be attained by various *available* solid waste management practices . . . which provide for the protection of public health and the environment” and “provide minimum criteria to be used by the States to define those solid waste management practices which constitute the open dumping of solid waste”); (emphasis added); *Appalachian Voices*, 989 F. Supp. 2d at 55 (holding that RCRA §§ 1008 and 2002(b) both apply to RCRA standards for solid waste, including CCR); 40 C.F.R. § 256.03(d)–(e) (providing that state Solid Waste Management Plans (“SWMPs”) are to be reviewed and, if necessary, revised by the state at least every three years, and that an SWMP must be revised when it “is not in compliance with the requirements of these guidelines;”); *id.* § 256.01(b)(2) (requiring state SWMPs to require “that all solid waste shall be disposed of in sanitary landfills or otherwise disposed of in an environmentally sound manner.”).

⁹⁷ See 40 C.F.R. § 256.63(a) (directing states to hold a public hearing “[b]efore approving a permit application (or *renewal* of a permit)” for solid waste facilities) (emphasis added); 40 C.F.R. § 256.06 (defining permit as “an entitlement to commence and continue operation of a facility as long as both procedural and performance standards are met.”); 40 C.F.R. § 239.04(b) (requiring state permit programs for municipal solid waste landfills (“MSWLFs”) to include “[a]n explanation of how the state will ensure that existing and new facilities are permitted or otherwise approved and in compliance with the relevant Subtitle D federal revised criteria;”); 40 C.F.R. § 258.74(a)(2) (requiring that, if operators of MSWLFs rely on a trust fund for financial assurance, payments into the trust fund be made each year “over the term of the *initial* permit”). (emphasis added).

that may lead to permit modification or revocation. Permit review and reissuance is recognized by EPA as an essential function of the RCRA permit system.⁹⁸

Requiring permits to be periodically renewed is also common sense. Facilities for the disposal of coal ash commonly operate for more than half a century. Decades of active coal ash disposal is followed by a 30-year minimum post-closure maintenance period. In light of the long-term nature of the disposal and maintenance activities at these sites, it is essential that state regulators periodically ascertain that the facility is in compliance with the permit, that the permit conditions adequately reflect the nature and scope of the disposal activities, and that the permit requires compliance with all updated safeguards.⁹⁹ Therefore, to ensure the protection of public health and the environment, review and reissuance of permits are essential functions of state permit programs.

In sum, Wyoming's proposal to grant lifetime operating permits for CCR units contravenes fundamental principles of our nation's bedrock environmental laws, including RCRA, as well as common sense.

V. APPROVING WYOMING'S PROGRAM WOULD VIOLATE THE WIIN ACT AND BE ARBITRARY AND CAPRICIOUS BECAUSE WDEQ HAS AN ONGOING PRACTICE OF COMMITTING AND ALLOWING VIOLATIONS OF THE REGULATIONS THAT ARE THE FOUNDATION OF ITS PRIMACY APPLICATION.

EPA cannot ignore the pattern of behavior and the ample documentation indicating that WDEQ will not require each CCR unit in the state to comply with standards as protective as the Federal CCR Rules. Information obtained through a records request provides clear evidence of WDEQ's unwillingness to cooperate with EPA's efforts to assess Wyoming's CCR program; its indefinite delay in exercising its permitting authority; its refusal to explain how it will enforce the state's requirements concerning monitoring, closure, and corrective action; and its history of failure to enforce those same requirements at every coal plant in the state. Thus, EPA must deny the program. Approval of the Wyoming program will create a shield to federal enforcement and oversight while WDEQ continues to act in dereliction of its duty to clean up and prevent coal ash pollution and protect public health and the state's water resources.

⁹⁸ See, e.g., EPA, EPA Controls Over RCRA Permit Renewals Report No. E1DSF9-11-0002-9100115 (Mar. 30, 1999), <https://www.epa.gov/sites/production/files/2015-09/documents/9100115.pdf>; EPA, Permit Modifications Report: Safeguarding the Environment in the Face of Changing Business Needs (Jan. 2016) ("EPA Permit Modifications Report"), https://www.epa.gov/sites/production/files/2016-01/documents/permit_mod_report_final_508.pdf.

⁹⁹ See, e.g., EPA Permit Modifications Report at 41 ("It is important to have current safety and emergency response information available and related equipment ready in the event there is a fire, spill, or other emergency at a permitted facility. There are permit modifications that owners and operators of permitted facilities must propose when certain changes are made at the facility. These changes include things such as updated emergency/contingency plans, emergency contacts, and emergency equipment.").

A. The WIIN Act Requires EPA to Consider How Wyoming Is Administering Its CCR Regulations.

The WIIN Act enables EPA to approve Wyoming’s program only upon determining that the program “requires each coal combustion residuals unit located in the State *to achieve compliance with*” the Federal CCR Rules or state rules that are “at least as protective.”¹⁰⁰ This language compels EPA to evaluate Wyoming’s program at the time of its application—including by considering the active permits WDEQ issued pursuant to its program—rather than base its decision upon speculation about how Wyoming might operate its program in the future.¹⁰¹ As EPA informed WDEQ, “[a]ll information that is relevant to whether a state program meets either of these standards is appropriately part of the record for the EPA’s decision.”¹⁰² By examining how “the state has been implementing the permit program for which it is seeking approval,”¹⁰³ EPA can determine whether Wyoming is administering a program that is consistent with the Federal CCR Rules, as mandated for program approval.

A state’s CCR permits are essential to determining whether a state’s program requires “each” CCR unit to “achieve compliance with” federal requirements or equally protective state requirements.¹⁰⁴ EPA acknowledged this in its Alabama Primacy Denial. There, EPA explained that it could not make this mandatory determination under the WIIN Act without considering “both a State’s statute and regulations and what the State actually requires individual CCR units to do, such as in permits or orders”¹⁰⁵ EPA elaborated:

[I]t would be both unreasonable and arbitrary and capricious to ignore issued permits since they are the best evidence of whether a State program does in fact require each CCR unit in the State to achieve compliance with the Federal CCR regulations or State standards that are at least as protective as the Federal regulations.¹⁰⁶

¹⁰⁰ 42 U.S.C. § 6945(d)(1)(B) (emphasis added).

¹⁰¹ Alabama Primacy Denial, 89 Fed. Reg. at 48,778 (“This direction necessarily includes Agency consideration of the existing record of what the State actually requires individual CCR units to do pursuant to the program that the state has submitted to EPA for approval.”).

¹⁰² EPA Letter to WDEQ, Docket ID No. EPA-HQ-OLEM-2025-0221-0039, at 2 (Dec. 5, 2023) (“EPA Dec. 2023 Letter”).

¹⁰³ *Id.* (citing Alabama Primacy Denial, 89 Fed. Reg. at 55,222–23).

¹⁰⁴ 42 U.S.C. § 6945(d)(1)(B).

¹⁰⁵ Alabama: Denial of State Coal Combustion Residuals Permit Program, 88 Fed. Reg. 55,220, 55,226 (Aug. 14, 2023) (“Alabama Proposed Primacy Denial”) (emphasis added); *see also* Alabama Primacy Denial, 89 Fed. Reg. at 48,781 (“Section 4005(d)(1) of RCRA directs EPA to determine whether a State program ‘requires each’ CCR unit in the State ‘to achieve compliance’ with either the Federal standards or an alternative State program at least as protective as the Federal CCR regulations Given that statutory directive, EPA concludes that it cannot ignore permits that are available prior to approval of a State CCR program, as in this case.” (citation omitted)).

¹⁰⁶ Alabama Primacy Denial, 89 Fed. Reg. at 48,781.

The WIIN Act’s requirement to consider *what the state actually requires individual CCR units to do*—including by evaluating those units’ permits—is necessary given the WIIN Act’s permit shield provision. As EPA explains in its Proposed Approval:

Once a final CCR permit is issued by an approved State or pursuant to a Federal CCR permit program, [] the terms of the permit apply in lieu of the terms of the Federal CCR regulations and/or requirements in an approved State program, and RCRA section 4005(d)(3) provides a permit shield against direct enforcement of the applicable Federal or State CCR regulations¹⁰⁷

In other words, once a permit is issued, a unit owner is bound to the permit’s terms, and these determine whether the unit is required “to achieve compliance with” criteria that are “at least as protective as” federal requirements. Permits are therefore essential components of a state program, and EPA must consider them to determine whether the program satisfies the conditions for primacy under the WIIN Act.¹⁰⁸

Another critical factor EPA must consider when evaluating a state program is how the governing agency interprets the state CCR regulations.¹⁰⁹ For example, understanding how WDEQ interprets the program’s closure, groundwater monitoring, and corrective action regulations is critical to evaluating the sufficiency of WDEQ’s application and, ultimately, the state program. Here, the Wyoming program incorporates the Federal CCR Rules’ closure, groundwater monitoring, and corrective action requirements by reference. Thus, EPA must determine whether WDEQ interprets the Wyoming program’s standards to impose the same requirements as the Federal CCR Rules in order to know the appropriate criteria to apply when evaluating the sufficiency of the WDEQ’s application and program.¹¹⁰

EPA unconvincingly attempts to justify its failure to consider Wyoming’s permits and WDEQ’s interpretation of state CCR regulations. The Agency first tries to supplant the WIIN Act’s plain language standard with one of its own creation. In its Proposed Approval, EPA claims that the Act “directs EPA to determine that the State *has sufficient authority* to require compliance at all CCR units located within the State.”¹¹¹

The WIIN Act requires, however, that EPA determine whether a state *actually* requires each CCR unit to achieve compliance, not just whether the state has the authority to require compliance should it choose to do so: “the Administrator . . . shall approve . . . a permit program . . . if the Administrator determines that the program . . . requires each coal combustion

¹⁰⁷ Wyoming Proposed Approval, 90 Fed. Reg. at 42,349.

¹⁰⁸ 42 U.S.C. § 6945(d)(1)(B).

¹⁰⁹ EPA Dec. 2023 Letter at 3.

¹¹⁰ *Id.*

¹¹¹ Wyoming Proposed Approval, 90 Fed. Reg. at 42,350 (emphasis added); *see also id.* (stating that “EPA evaluates the State’s *authority* to issue permit and impose condition in those permits, as well as the State’s *authority* to conduct compliance monitoring and enforcement”) (emphasis added); *see also id.* at 24,351 (stating that an adequate program must ensure the state “has the authority to impose requirements for CCR units adequate to ensure compliance with either 40 CFR part 257, subpart D, or such other State criteria that have been determined and approved by the Administrator to be at least as protective as 40 CFR part 257, subpart D”).

residuals unit located in the State to achieve compliance with” federal requirements or at-least-as-protective state requirements.¹¹² A state agency that has the authority to implement standards that are at least as protective as those of the Federal CCR Rules, but fails to do so, is clearly not requiring each unit within the state to achieve compliance with federal requirements or their state equivalents. EPA’s interpretation—which would insert “has sufficient authority to” into this plain language—is far from the “single, best meaning” of the statute.¹¹³ EPA’s interpretation is also a stark departure from its interpretation of this same language in its Alabama Primacy Denial, where it concluded that the statute compels consideration of “both a State’s statute and regulations and what the State actually requires individual CCR units to do.”¹¹⁴

In its letter to WDEQ, dated December 5, 2023, EPA clarified what the scope of its review of the Wyoming program application should be:

The statutory standard in 42 U.S.C. § 6945(d)(1)(B) governs, stating ‘EPA shall approve a [state CCR permit] program if the Administrator determines that the program...requires each coal combustion residual unit located in the State to achieve compliance with the applicable criteria for [CCR] units under part 257...or such other State criteria that the Administrator, after consultation with the State, determines to be at least as protective as the [federal] criteria.’ All information that is relevant to whether a state program meets either of these standards is appropriately part of the record for the EPA’s decision. For example, when the state has been implementing the permit program for which it is seeking approval, the EPA considers that implementation to be appropriately part of the record for its decision.¹¹⁵

EPA further noted in this letter that Wyoming inaccurately asserted in its CCR permit program application that EPA’s review only considers four criteria: “public participation, guidelines for compliance, guidelines for enforcement authority, and intervention in civil enforcement proceedings,” and it “does not attempt to consider the subsequent implementation of the state’s CCR permit program.”¹¹⁶ The four criteria referenced in Wyoming’s application are indeed important parts of what EPA is required to consider, but they are not the sum total of what EPA is required to review. To determine whether a state program meets the statutory standard, the Agency must also evaluate, for example, whether the state has already implemented state standards in a way that is consistent with the federal CCR regulations in 40 C.F.R. Part 257, Subpart D.¹¹⁷

¹¹² 42 U.S.C. § 6945(d)(1)(B).

¹¹³ *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 400 (2024).

¹¹⁴ Alabama Proposed Primacy Denial, 88 Fed. Reg. at 55,226 (emphasis added); *see also* Alabama Primacy Denial, 89 Fed. Reg. at 48,778. EPA also has not provided the requisite “reasoned analysis” for this about-face. *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983).

¹¹⁵ EPA Dec. 2023 Letter at 1–2.

¹¹⁶ *Id.* at 2.

¹¹⁷ *Id.*

EPA must consider how Wyoming is administering its program and how Wyoming interprets the state CCR regulations, as required by the WIIN Act. As discussed below, such a review compels denial of Wyoming's application.

B. Wyoming Has Unlawfully Paused the Chapter 18 Permitting Process, Thereby Delaying the Implementation of the Regulations Claimed to Be as Protective as the Federal CCR Rules.

In response to Commenters' records request, described further in Section VI, WDEQ provided several letters detailing extension requests from power plant owners and WDEQ responses thereto. Among these are two letters revealing that Wyoming paused all permit applications and permit activity required for CCR units by Chapter 18 even though it has no legal basis for doing so.

On March 20, 2025, PacifiCorp submitted a letter to the Administrator of WDEQ requesting that WDEQ delay the review of all submitted Chapter 18 permit applications and the submission of all future permit applications for PacifiCorp's three power plants, Jim Bridger, Naughton, and Dave Johnston, until WDEQ obtains approval for the Wyoming program from EPA.¹¹⁸ On March 27, 2025, a short seven days later, the WDEQ Administrator granted PacifiCorp's request.¹¹⁹ Around the same time, Basin Electric Power Cooperative requested a pause on all of the Laramie River Station's permit applications submitted pursuant to Chapter 18.¹²⁰ Although WDEQ did not provide Commenters with its reply to Basin Electric's request, it is safe to assume that WDEQ similarly granted the requested pause.

This sweeping delay of all Chapter 18 permit applications and permits follows several extensions of operating permits granted by WDEQ to PacifiCorp in 2023 and 2024. In September 14, 2023, WDEQ extended the Solid Waste Chapter 3 operating permit for PacifiCorp's Dave Johnston Horseshoe Landfill for three years to September 30, 2027.¹²¹ Consequently, the deadline for a Chapter 18 application for a renewal permit would be extended to September 30, 2026, pursuant to Section 4(b)(i).¹²² On April 19, 2024, WDEQ extended the Solid Waste Chapter 3 operating permit for the Jim Bridger #1 Landfill for two years to April 30, 2026¹²³ and in doing so extended the deadline for its renewal permit application to April 30, 2025, pursuant to Section 4(b)(i). It is likely that other extensions have been requested and granted.

WDEQ's extension of permit application deadlines was done in complete disregard of Chapter 18 requirements. WDEQ did not provide public notice for these extensions. The Administrator also did not approve an "alternate schedule" for submission of the applications as required by Chapter 18, Section 4(b)(ii). WDEQ suggested in its extension letter to PacifiCorp

¹¹⁸ Email from Nikou Hesari, PacifiCorp to WDEQ (Mar. 20, 2025) (attached).

¹¹⁹ WDEQ Letter to PacifiCorp (Mar. 27, 2025) (attached).

¹²⁰ Basin Electric Letter to WDEQ Requesting Pause on Permit Applications (Mar. 24, 2025) (attached).

¹²¹ WDEQ Letter to PacifiCorp Granting Horseshoe LF Permit Extension (Sept. 14, 2023) (attached).

¹²² See 020-18 Wyo. Code R. § 18-4(b)(i) (requiring existing CCR landfills to submit permit renewal applications "no later than twelve months prior to the expiration date of the facility's existing permit or twelve months after the effective date of this Chapter, whichever comes later").

¹²³ WDEQ Letter to PacifiCorp Granting Bridger LF Permit Extension (Apr. 19, 2024) (attached).

that they “submit a permit application schedule” to WDEQ within 60 days of EPA’s approval of the Wyoming program. However, Chapter 18 provides no authority for this abdication of authority. WDEQ is allowing power plants to delay permitting and set their own permitting schedule without approval of a specific alternate schedule approved by the Administrator for good cause.¹²⁴ No “good cause” justification was provided by the Administrator.

WDEQ’s departure from Chapter 18 requirements is wholly arbitrary and warrants the denial of the Wyoming program. WDEQ has clearly demonstrated that it is not abiding by its own regulations and there is no reason to believe it will do so in the future. EPA cannot conclude that the Wyoming program will ensure that each CCR unit in the state will meet the federal protectiveness standards based solely on the content of rules that WDEQ is already ignoring.

It is clear that Wyoming power plants, not Wyoming residents, will be the primary beneficiaries of an indefinite delay of the application and issuance of Chapter 18 permits. In addition to cost savings and the avoidance of state scrutiny of their operations, Wyoming power plants will enjoy reduction of federal oversight and enforcement. This is because federal enforcement is significantly constrained by the WIIN Act whether or not an approved state actually issues permits. Pursuant to the WIIN Act, EPA enforcement in an approved state requires either a request by the State for assistance, which is highly unlikely given that WDEQ questioned EPA’s authority even to inspect state facilities, as noted below, or EPA’s consideration of state actions and a determination of necessity. Both are significant hurdles for EPA.¹²⁵

C. EPA Flagged Concerns with Wyoming’s Interpretation and Application of the Federal CCR Rules, and WDEQ Refused to Address Them.

In its December 5, 2023 letter to WDEQ, EPA stated that it needed further information from Wyoming on its interpretation of the performance standards applicable to closure, groundwater monitoring, and corrective action.¹²⁶ EPA noted that the Narrative Statement in Wyoming’s program application did not include sufficient explanation of how WDEQ interprets the state CCR regulations in these three critical areas “to allow the Agency to evaluate the sufficiency of WYDEQ’s application and, ultimately, its program.”¹²⁷ However, WDEQ did not resolve this deficiency.¹²⁸

While EPA found that Wyoming’s regulatory language is almost identical to that of the Federal CCR Rules, EPA stated that it could not determine from the Narrative Statement how WDEQ interprets its closure, groundwater monitoring, and corrective action regulations. According to EPA, if WDEQ interprets its regulations to impose different requirements than the Federal CCR Rules, “even if on their face the State regulations are identical to the federal standards, the appropriate criterion to evaluate the sufficiency of the application, and ultimately

¹²⁴ See 020-18 Wyo. Code R. § 18-4(b).

¹²⁵ 42 U.S.C. § 6945(d)(4)(B)(i).

¹²⁶ EPA Dec. 2023 Letter at 3.

¹²⁷ *Id.*; WDEQ, Application to USEPA Region VIII for CCR Permit Program Approval, Coal Combustion Residuals Permitting Program Description, Docket ID No. EPA-HQ-OLEM-2025-0221-0034 (Feb. 2023) (“Wyo. Narrative Statement”).

¹²⁸ See Wyo. Narrative Statement.

the program, would be 42 U.S.C. § 6945(d)(1)(B)(ii) (Other state standards), rather than 42 U.S.C. § 6945(d)(1)(B)(i) (adoption of federal CCR regulations).”¹²⁹ Subsection (ii) provides that different state requirements may only be approved if “the Administrator, after consultation with the State, determines [the State criteria] to be at least as protective as the criteria described in clause (i).”¹³⁰ Therefore, EPA determined that it needed additional information on whether WDEQ interprets its closure, groundwater monitoring, and corrective action in a manner that is “at least as protective as” the federal criteria.

EPA’s concerns stemmed from its evaluation of several CCR unit closures at regulated facilities in Wyoming. According to EPA:

Information currently in the record indicates that Wyoming may interpret its closure performance standards for CCR surface impoundments to impose different requirements than are found in 40 C.F.R. § 257.102(d). Currently there are several units in the State with closure plans to close with CCR remaining in contact with the groundwater and with no engineering measures to prevent the continued flow of groundwater into and out of the closed unit. The continued flow of groundwater through closed CCR units allows for the release of pollutants from CCR contained in the units, posing an ongoing hazard to human health and the environment. The EPA conducted a screening analysis of CCR surface impoundments closing with waste in place and found that Naughton North Ash Pond, Naughton South Ash Pond, Naughton [Flue-Gas De-Sulfurization (“FGD”)] Pond 1, Naughton FGD Pond 2 at the Naughton Plant in Kemmerer, WY and the Jim Bridger Power Plant FGD Pond 2 have full or partial saturation of CCR in groundwater. For similar reasons, the EPA also needs more information from WYDEQ on how it interprets its requirements for groundwater monitoring and corrective action.¹³¹

The Federal CCR regulations authorize two methods for closure of surface impoundments: closure by removal¹³² and closure in place,¹³³ the latter of which may be used *only* if the performance standards for closure in place are satisfied at that ash pond.¹³⁴ The performance standards for closure in place require that:

¹²⁹ EPA Dec. 2023 Letter at 3.

¹³⁰ *See also* 42 U.S.C. § 6945(d)(1)(C).

¹³¹ EPA Dec. 2023 Letter at 4.

¹³² *See* 40 C.F.R. § 257.102(c).

¹³³ *See id.* § 257.102(d).

¹³⁴ *See* Alabama Primacy Denial, 89 Fed. Reg. 48,774, 48,813 (“But if a facility cannot meet the performance standards in § 257.102(d), the facility must close by the only other method allowed under the regulations: closure by removal under § 257.102(c).”); EPA, Denial of Alternative Closure Deadline for General James M. Gavin Plant, Cheshire, Ohio, at 26–27 (Nov. 18, 2022) (“Final Gavin Denial”) (“If the performance standards for each option can both be met, the regulations allow a facility to select either of the options. However, a facility must meet all of the performance standards for the closure option it has selected, and if it cannot meet all of the performance standards for one option, then it must select the other option and meet all of the performance standards for that option. 40 C.F.R. § 257.102(a).”) (attached).

- “Free liquids” be “eliminated” prior to the installation of a cover system;¹³⁵
- The impoundment be closed in a manner that will: “control, minimize or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters or to the atmosphere;”¹³⁶ and
- The impoundment be closed in a manner that will “preclude the probability of future impoundment of water, sediment, or slurry.”¹³⁷

These standards, taken together, establish that coal ash may **not** remain in contact with groundwater or other liquids after closure. As detailed by the D.C. Circuit in a June 2024 decision, “[t]he 2015 Rule, standing on its own, makes clear that operators cannot close their surface impoundments with groundwater leaching in and out of the unit and mixing with the coal residuals.”¹³⁸ The Court went on to explain, “[a] unit operator closing a surface impoundment with waste saturated feet-deep in groundwater has neither eliminated ‘free liquids’ from the impoundment nor controlled the ‘infiltration of liquids’ into that unit.”¹³⁹

EPA’s denial of Gavin Power’s request to delay the cease-receipt deadline for a coal ash pond at that Ohio plant echoes the D.C. Circuit’s holdings in *EEI v. EPA* and is instructive here. In that denial, EPA explained that, based on its review of the site, “at least a portion of the closed [CCR surface impoundment] could be sitting in groundwater as much as 64 feet deep, which would mean that as much as 40% of the CCR in the unit would still be saturated—and would remain so indefinitely.”¹⁴⁰ However,

[T]he narrative description in the closure plan entirely fails to discuss the groundwater infiltrating into the impoundment, and to describe how, despite those continuous flows into the unit, the facility eliminated free liquids as required by 40 C.F.R. § 257.102(d)(2)(i). The closure plan also fails to describe any engineering measures taken to “control, minimize, or eliminate to maximum extent feasible” either the post-closure infiltration of liquids from either the side or base of the units into the waste, or the post-closure releases of CCR or leachate to the groundwater. 40 C.F.R. § 257.102(d)(1)(i). Finally, the closure plan narrative includes no discussion of how Gavin has “preclude[d] the probability of future impoundment of water, sediment, or slurry.” 40 C.F.R. § 257.102(d)(1)(ii).¹⁴¹

The only related discussion in Gavin Power’s written closure plan, EPA noted, was the unsupported statement that “[a]s part of closure of the CCR unit, all free water will be removed.”¹⁴² EPA concluded that, without any detailed description of exactly which measures Gavin Power would take or had taken to satisfy the directive to eliminate free liquids and meet

¹³⁵ 40 C.F.R. § 257.102(d)(2)(i).

¹³⁶ *Id.* § 257.102(d)(1)(i).

¹³⁷ *Id.* § 257.102(d)(1)(ii).

¹³⁸ *Elec. Energy*, 106 F. 4th at 31.

¹³⁹ *Id.*

¹⁴⁰ Final Gavin Denial at 15 (attached).

¹⁴¹ *Id.*

¹⁴² *Id.* at 25.

other performance standards, neither the closure of the CCR surface impoundment at issue, nor the written closure plan for it, satisfied the federal CCR rule.¹⁴³

EPA's discussion of non-compliant closure in place, inadequate permits, and insufficient permit applications in its denial of Alabama's application for primacy reiterate the same point: the owner of an impoundment cannot satisfy the performance standards for closure in place without a detailed demonstration that, after closure, the coal ash will not be in contact with groundwater.¹⁴⁴ Moreover, if a permit does not clearly spell out site-specific compliance with those performance standards—specifically how they will be satisfied for *that* coal ash pond—it fails to ensure compliance with the rules.¹⁴⁵

If WDEQ interprets its regulations to impose different requirements than those of the Federal CCR Rules, EPA needs to evaluate the sufficiency of the application, and ultimately the program, under 42 U.S.C. § 6945(d)(1)(B)(ii). Because Subsection (ii) provides that different State requirements may only be approved if “the Administrator, after consultation with the State, determines [the State criteria] to be at least as protective as the criteria described in clause (i),”¹⁴⁶ the D.C. Circuit's and EPA's interpretations of the federal performance standards for closure in place make clear that a state program that allows closure in place with ash remaining in contact with groundwater or other liquids *after* closure is not “at least as protective as” the Federal CCR Rules.

WDEQ never produced the information that EPA insisted was necessary for the Agency to make a determination concerning the Wyoming program. Instead, WDEQ claimed that EPA had no authority under the WIIN Act to seek this information, stating, “EPA has to determine whether the Wyoming CCR permit program requires units to meet the criteria under 40 C.F.R.

¹⁴³ *Id.* at, *e.g.*, 14, 30–45.

¹⁴⁴ *See* Alabama Primacy Denial, 89 Fed. Reg. at 48,813 (“[I]f a facility that has waste in contact with groundwater has installed only a cover system and taken no measures to address the continued infiltration of groundwater or the continued releases of leachate to the groundwater, or the CCR that EPA estimates could still be saturated—and would remain so indefinitely—has not met the performance standards for closure with waste in place.”).

¹⁴⁵ *Id.* at 48,777 (“EPA reviewed four permits for CCR surface impoundments in Alabama and the Agency found that those permits allow CCR in closed units to remain saturated by groundwater, without requiring adequate (or any) engineering measures to control the groundwater flowing into and out of the closed unit Because of the technical insufficiency of the permit terms as issued and the absence of any supporting rationale for why those permit terms were protective of human health and the environment notwithstanding their deficiencies, EPA could not conclude that the Alabama CCR permits are as protective as the Federal CCR regulations; therefore, EPA could not conclude that Alabama's program satisfied the requirement for approval of a State CCR permit program.”); *id.* at 48,801 (“The Permit could either have specified what the facility needs to do to meet the requirements, or ADEM could have required the facility to submit a revised Closure Plan. ADEM did neither, and as a consequence, there is no binding and enforceable provision for the facility to comply with these performance standards. In essence, ADEM has issued a permit that allows the facility to decide whether to comply with § 257.102(b) and (d)(2), rather than ‘requiring each CCR unit to achieve compliance with’ those provisions. 42 U.S.C. 6945(d)(1).”).

¹⁴⁶ *See also* 42 U.S.C. § 6945(d)(1)(C).

257, *nothing more*.”¹⁴⁷ WDEQ added that it objected to EPA’s request for information, stating, “[t]here is no further explanation necessary as there is no requirement in the Federal Rule or the WIIN Act to include the specific information EPA is requesting.”¹⁴⁸

This was also not the first time WDEQ rebuffed EPA efforts to assess the Wyoming program. On October 5, 2023, Linda Jacobson of EPA Region 8 sent an email to Suzanne Engels and Jody Weikart of WDEQ to discuss plans to inspect Wyoming’s coal-fired power plants to determine compliance with the Federal CCR Rules.¹⁴⁹ On October 10, 2023, Ms. Jacobson informed WDEQ that EPA planned to inspect the Naughton Power Plant on October 31 and November 1, 2023.¹⁵⁰ Ms. Engels of WDEQ, however, questioned the authority of EPA to inspect Wyoming’s facilities.¹⁵¹ When notified by EPA Region 8 of EPA’s authority under the WIIN Act to conduct inspections, Ms. Engels replied on October 13, 2023, that DEQ reviewed the statutes cited by EPA and stated, “it is our understanding that EPA does not have inspection authority.”¹⁵² Commenters do not know whether EPA was able to inspect the CCR units at Naughton Power Plant. As described further below, CCR units at the Naughton plant have caused high levels of heavy metal contamination of groundwater and significant violations of the Federal CCR Rules exist at the plant.

In sum, when one considers the opposition WDEQ has launched to fend off EPA inspections of state CCR units, its refusal to explain critical program areas where obvious conflicts with the Federal CCR Rules exist, and its indefinite and illegal extension of permit application deadlines, EPA cannot determine that the program will require each CCR unit in the State to comply with requirements as protective as the Federal CCR Rules.

D. WDEQ Has Failed to Ensure Compliance with the Federal CCR Rules at All Four of the Coal-Fired Power Plants in the State.

1. PacifiCorp’s Jim Bridger Power Plant

a. Deficient groundwater monitoring system at PacifiCorp’s Jim Bridger Ash Landfill.

PacifiCorp’s Jim Bridger Ash Landfill is the largest coal ash disposal site in the state by volume, containing over 11 million cubic yards of ash according to its 2024 inspection report.¹⁵³

¹⁴⁷ See WDEQ Response to EPA, Docket ID No. EPA-HQ-OLEM-2025-0221-0044, at 2 (Jan. 29, 2024) (“WDEQ Jan. 2024 Response”) (emphasis added).

¹⁴⁸ *Id.* at 10.

¹⁴⁹ See Emails Between EPA and WDEQ Discussing CCR Inspections, Docket ID No. EPA-HQ-OLEM-2025-0221-0038 (Oct. 13, 2023).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ Tetra Tech, CCR Rule Operating Criteria §257.84(b)(1) 2024 Annual Inspection by A Qualified Engineer: Industrial Landfill Jim Bridger Power Plant Sweetwater County Wyoming, at 5 (Dec. 13, 2024) https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/ccr/jim-bridger/landfill/operating-criteria/engineering-inspections/JBLandfill_2024%20Annual%20Inspection.pdf.

Since the first groundwater monitoring report provided in 2017 pursuant to the 2015 CCR Rule, monitoring at the landfill has detected boron, calcium, fluoride, and pH at concentrations exceeding background.¹⁵⁴ Evidently, coal ash in the landfill is impacting groundwater. However, the full extent of contamination cannot be accurately measured because PacifiCorp's network of monitoring wells does not meet requirements in the 2015 CCR Rule. Those requirements state:

The owner or operator of a CCR unit must install a groundwater monitoring system that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer . . . All potential contaminant pathways must be monitored . . . [and] [t]he number, spacing, and depths of monitoring systems shall be determined based upon site-specific technical information¹⁵⁵

When groundwater monitoring wells are spaced far apart, large areas of the downgradient unit boundary, including contaminant pathways, are unmonitored. This has been the case at the Jim Bridger Ash Landfill since PacifiCorp completed its first 2017 groundwater monitoring. As evidenced in their 2023 application for a Chapter 18 CCR landfill permit, this deficient monitoring network persists.¹⁵⁶ Downgradient monitoring wells at the Ash Landfill are as far as 1,750 feet apart (wells JB-FX-3 and 392-WL).¹⁵⁷ This is grossly inadequate and leaves almost half of the downgradient edge of the Ash Landfill unmonitored, in violation of the Federal CCR Rules. WDEQ apparently failed to ensure that PacifiCorp remedy this deficiency. WDEQ's Ash Landfill permit process demonstrates that Wyoming is not meeting its statutory duty to require each CCR unit in the State "to achieve compliance with" the Federal CCR Rules or at-least-as-protective requirements.¹⁵⁸

b. Deficient remedy selection process for Jim Bridger's FGD Pond 1.

Evidence of significant groundwater contamination from Jim Bridger's FGD Pond 1 has been clear since groundwater monitoring data was first published in 2017.¹⁵⁹ In the 2017 Annual Groundwater Monitoring and Corrective Action Report, the plant's monitoring data revealed that

¹⁵⁴ Water & Environmental Technologies, Groundwater Monitoring & Corrective Action Report Ash Landfill – Jim Bridger Power Plant Point of Rocks Wyoming, at 21 (Jan. 31, 2018), <https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/ccr/jim-bridger/landfill/groundwater/annual-groundwater-reports/2017%20JBLAnnual.pdf>.

¹⁵⁵ 40 C.F.R. § 257.91(a)–(b).

¹⁵⁶ Excerpt of Water & Environmental Technologies, WDEQ Solid Waste CCR Landfill Permit – Jim Bridger Ash Landfill, at 34 (Dec. 2023) (attached).

¹⁵⁷ Excerpt of Haley & Aldrich, 2024 Annual Groundwater Monitoring and Corrective Action Report Industrial Landfill Jim Bridger Power Plant, at fig. 4 (Jan. 2025), <https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/ccr/jim-bridger/landfill/groundwater/annual-groundwater-reports/JB%20Landfill%202024%20GWMCA%20Report%20F.pdf> (attached).

¹⁵⁸ 42 U.S.C. § 6945(d)(1)(B).

¹⁵⁹ It is likely that groundwater monitoring data submitted to WDEQ long before 2017 similarly revealed impacts from coal ash.

“all of the Appendix III constituents exceed background.”¹⁶⁰ In 2018, PacifiCorp reported that, “arsenic, cadmium, cobalt, fluoride, lead, lithium, molybdenum, radium, and selenium exceeded their groundwater protection standards.”¹⁶¹ PacifiCorp then conducted an Assessment of Corrective Measures as mandated by the 2015 CCR Rule in May 2019,¹⁶² which requires the owner or operator to select a remedy for this contamination “as soon as feasible.”¹⁶³ Six years later, PacifiCorp has yet to select a remedy. As of October 2025, only interim measures have been implemented, and these have been largely unsuccessful.¹⁶⁴ PacifiCorp’s protracted and ongoing process for selecting a final groundwater remedy violates the Federal CCR Rules. WDEQ has overseen and allowed this deficient process.¹⁶⁵ Again, Wyoming is not meeting its statutory duty to require each CCR unit in the State “to achieve compliance with” the Federal CCR Rules or at-least-as-protective requirements.¹⁶⁶

c. Noncompliant closure of Jim Bridger’s FGD Ponds 1 and 2.

Jim Bridger’s FGD Pond 1 was closed, leaving ash in place under a WDEQ-approved closure plan, with closure completed in December 2017.¹⁶⁷ The closure plan describes that “...groundwater elevations in the Almond formation in the vicinity of FGD Pond 1 vary between 6660 and 6670 feet. Based on past geotechnical borings, the bottom clay liner pond floor is

¹⁶⁰ Water & Environmental Technologies, Groundwater Monitoring & Corrective Action Report FGD Pond 1 – Jim Bridger Power Plant, at 19 (Jan. 31, 2018), <https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/ccr/jim-bridger/fgd-pond-1/groundwater/annual-groundwater-reports/2017GMandCAReportJBPI.pdf>.

¹⁶¹ Water & Environmental Technologies, Groundwater Monitoring & Corrective Action Report FGD Pond 1 – Jim Bridger Power Plant, at 17 (Jan. 2019), <https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/ccr/jim-bridger/fgd-pond-1/groundwater/annual-groundwater-reports/2018GMCAReportJBPI.pdf>.

¹⁶² Excerpt of Water & Environmental Technologies, Corrective Measures Assessment FGD Pond 1 – Jim Bridger Power Plant (May 2019), <https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/ccr/jim-bridger/fgd-pond-1/groundwater/corrective-measures-assessment/CMA.pdf> (attached).

¹⁶³ 40 C.F.R. § 257.97(a).

¹⁶⁴ Barr Engineering Co., Semiannual Selection of Remedy Progress Report, Jim Bridger FGD 1 (May 15, 2025), <https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/ccr/jim-bridger/fgd-pond-1/groundwater/semi-annual-corrective-action-reports/Technical%20Memorandum%20Bridger%20FGD%201%20SoR%20FINAL%20.pdf> (attached); Excerpt of Water & Environmental Technologies, Jim Bridger Power Plant FGD Pond 1 and Evaporation Pond Subgrade Dewatering Work Plan (Oct. 2019) (attached).

¹⁶⁵ *Id.*

¹⁶⁶ 42 U.S.C. § 6945(d)(1)(B).

¹⁶⁷ Stantec, Jim Bridger Power Plant Flue Gas Desulfurization FGD Pond 1 Notification of Completion of Closure (Feb. 24, 2020), <https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/ccr/jim-bridger/fgd-pond-1/closure/Jim%20Bridger%20FGD%20Pond%201%20Closure%20Notification.pdf> (attached); Excerpt of WYDEQ Permit No. 15-464 Jim Bridger Power Plant FGD Pond 1 Closure Project (Jan. 11, 2016) (attached).

located at approximately 6664 feet in the deepest part of the pond.”¹⁶⁸ In other words, the bottom of the pond is saturated in groundwater by up to six feet. The closure plan approved by WDEQ in 2016 does not require compliance with 40 C.F.R. § 257.102(d), which prohibits closing a coal ash pond in place with ash in contact with groundwater.

Similarly, WDEQ has overseen Jim Bridger’s FGD 2 closure process, though closure has not yet been completed.¹⁶⁹ Cross sections of this ash dump, attached in a 2019 groundwater monitoring report, reveal that ash is likely in contact with groundwater.¹⁷⁰ This is another instance of a WDEQ-approved closure plan that is not compliant with the Federal CCR Rules. By approving these illegal closures, Wyoming has demonstrated that it is not requiring each CCR unit in the State “to achieve compliance with” the 2015 CCR Rule or at-least-as-protective requirements.¹⁷¹

2. *PacifiCorp’s Naughton Power Plant*

a. **Noncompliant closure of Naughton’s FGD Pond 1.**

PacifiCorp closed FGD Pond 1 at Naughton leaving ash in place under a WDEQ-approved closure plan, with closure completed in 2020.¹⁷² The History of Construction document for FGD Pond 1 shows that the original ground surface of the pond is estimated to be as deep as 6913 AMSL,¹⁷³ and documents submitted to WDEQ in conjunction with the closure permit identify the bottom of pond elevation as between 6900 and 6910.¹⁷⁴ Potentiometric maps consistently show groundwater elevation in the pond between 6900 and 6920 AMSL,¹⁷⁵

¹⁶⁸ Excerpt of MWH, Jim Bridger Power Plant Flue-Gas De-Sulfurization (FGD) Pond 1 Closure Design Report, at 9 (Sept. 2015), <https://www.pacifiCorp.com/content/dam/pcorp/documents/en/pacifiCorp/ccr/jim-bridger/fgd-pond-1/closure/P1Closure%20Plan.pdf> (attached).

¹⁶⁹ WYDEQ Permit No. 20-249, PacifiCorp – Preparation for Jim Bridger Power Plant FGD Pond 2 Closure (Aug. 21, 2020) (attached).

¹⁷⁰ Excerpt of Water & Environmental Technologies, Alternate Source Determination Ash Landfill – Jim Bridger Power Plant, at App. A, fig. A-3 (Apr. 2018) https://www.pacifiCorp.com/content/dam/pcorp/documents/en/pacifiCorp/ccr/jim-bridger/landfill/groundwater/annual-groundwater-reports/JBLAnnual2018_1.pdf (attached).

¹⁷¹ 42 U.S.C. § 6945(d)(1)(B).

¹⁷² Stantec, Naughton Power Plant Flue Gas Desulfurization FGD Pond 1 Notification of Completion of Closure (Feb. 14, 2020), <https://www.pacifiCorp.com/content/dam/pcorp/documents/en/pacifiCorp/ccr/naughton/fgd-pond-1/closure/Naughton%20FGD%20Pond%201%20Notification%20of%20completion%20of%20closure.pdf>.

¹⁷³ Excerpt of Stantec, Naughton FGD Pond 1 History of Construction, at App. A.3, Sheet 8 of 8 (Mar. 28, 2018), <https://www.pacifiCorp.com/content/dam/pcorp/documents/en/pacifiCorp/ccr/naughton/fgd-pond-1/design-criteria/History%20of%20Construction.pdf> (attached).

¹⁷⁴ Excerpt of WYDEQ Permit No. 18-416, Naughton Power Plant – FGD Pond 1 Closure Project, at tbl. 1 (Jan. 15, 2019) (attached);

¹⁷⁵ Excerpt of Haley & Aldrich, 2024 Annual Groundwater Monitoring and Corrective Action Report FGD Pond 1 Naughton Power Plant, at fig. 3, (Jan. 2025), <https://www.pacifiCorp.com/content/dam/pcorp/documents/en/pacifiCorp/ccr/naughton/fgd-pond-1>

indicating that ash stored in FGD Pond 1 is saturated with groundwater, in some areas potentially up to 20 feet. WDEQ has overseen the closure process at FGD Pond 1 since 2015 and extended the process in 2019.¹⁷⁶ The WDEQ-approved closure plan does not require compliance with 40 C.F.R. § 257.102(d), which prohibits closing a coal ash pond in place with ash in contact with groundwater.. By approving this illegal closure, Wyoming has demonstrated that it is not requiring each CCR unit in the State “to achieve compliance with” the Federal CCR Rules or at-least-as-protective requirements.¹⁷⁷

b. Noncompliant groundwater monitoring network at Naughton Power Plant.

The groundwater monitoring system at PacifiCorp’s Naughton Power Plant violates several requirements of the Federal CCR Rules. First, almost all background wells at the site contain significant concentrations of lithium and selenium.¹⁷⁸ These background wells violate the Federal CCR Rules because they cannot accurately represent the quality of background groundwater that has been unaffected by a CCR unit.¹⁷⁹ Moreover, in one case, a monitoring well (MW-8R) is used as both a downgradient well for the South Ash Pond and a background well for FGD Pond 4, a clear violation of the Federal CCR Rules.¹⁸⁰

Secondly, gaps in the downgradient monitoring network leave pathways of contamination unmonitored, in violation of the Federal CCR Rules.¹⁸¹ For example, at FGD Pond 5, at the northwest portion, along the northern edge, and along the northeast portion of the pond, wells are spaced greater than 1,000 feet apart and some wells are more than 200 feet from the waste boundary.¹⁸² Despite this, in 2017, WDEQ approved a permit to construct the pond, which included approval of its noncompliant groundwater monitoring system.¹⁸³ By approving this permit, Wyoming has demonstrated that it is not requiring each CCR unit in the State “to achieve compliance with” the Federal CCR Rules or at-least-as-protective requirements.¹⁸⁴

[1/groundwater/annual-groundwater-reports/N%20FGD%201%202024%20GWMCA%20Report%20F.pdf](#) (attached).

¹⁷⁶ Excerpt of WYDEQ Permit No. 14-373, Naughton Power Plant – FGD Pond 1 Closure Project, (Aug. 10, 2015), (attached); Excerpt of WYDEQ Permit No. 18-416, Naughton Power Plant – FGD Pond 1 Closure Project, at tbl. 1 (Jan. 15, 2019) (attached).

¹⁷⁷ 42 U.S.C. § 6945(d)(1)(B).

¹⁷⁸ Excerpt of Poisonous Coverup at App. B, p. 44 (attached).

¹⁷⁹ 40 C.F.R. §§ 257.91(a)(1), 257.93(a)

¹⁸⁰ Excerpt of Poisonous Coverup at App. B, p. 44 (attached).

¹⁸¹ 40 C.F.R. § 257.91(a)–(b).

¹⁸² Excerpt of Haley & Aldrich, 2024 Annual Groundwater Monitoring and Corrective Action Report FGD Pond 5 Naughton Power Plant, at fig. 1 (Jan. 2025),

<https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/ccr/naughton/fgd-pond-5/groundwater/annual-groundwater-reports/N%20FGD%205%202024%20GWMCA%20Report%20F.pdf> (attached).

¹⁸³ Excerpt of WYDEQ Permit No. 16-445, Naughton Power Plant – FGD Pond 5, at fig. 1 (Mar. 10, 2017), (attached).

¹⁸⁴ 42 U.S.C. § 6945(d)(1)(B).

c. Deficient remedy selection process at Naughton FGD Pond 2.

Naughton's FGD Pond 2 has been contaminating groundwater at least since groundwater monitoring began pursuant to the 2015 CCR Rule.¹⁸⁵ In 2017, monitoring revealed that "groundwater quality has been impacted by Appendix III constituents"¹⁸⁶ and in 2018 that "Appendix IV constituents: cobalt, lithium, radium, and selenium exceeded their groundwater protection standards."¹⁸⁷ PacifiCorp then conducted an Assessment of Corrective Measures as mandated by the 2015 CCR Rule in May 2019,¹⁸⁸ at which point the Rule mandates that the owner or operator select a remedy "as soon as feasible."¹⁸⁹ However, as of October 2025, only interim measures have been implemented.¹⁹⁰ These measures include capturing contaminated groundwater, and WDEQ has been involved in overseeing the construction of this system.¹⁹¹ WDEQ, while overseeing the construction of the system, has done nothing to date to require PacifiCorp to select and implement a remedy to clean up the highly contaminated groundwater. By allowing PacifiCorp to avoid selecting a corrective action remedy, Wyoming has demonstrated that it is not requiring each CCR unit in the State "to achieve compliance with" the Federal CCR Rules or at-least-as-protective requirements.¹⁹²

3. PacifiCorp's Dave Johnston Power Plant -- deficient remedy process

PacifiCorp's Dave Johnston Ash Pond has also been contaminating groundwater at least since groundwater monitoring began pursuant to the 2015 CCR Rule.¹⁹³ In 2017, monitoring revealed that "downgradient groundwater quality has been impacted by Appendix III

¹⁸⁵ It is likely that groundwater monitoring data submitted to WDEQ long before 2017 similarly revealed impacts from coal ash.

¹⁸⁶ Water & Environmental Technologies, Groundwater Monitoring & Corrective Action Report FGD Pond 2 – Naughton Power Plant, at 18 (Jan. 2018), <https://www.pacifiCorp.com/content/dam/pcorp/documents/en/pacifiCorp/ccr/naughton/fgd-pond-2/groundwater/annual-groundwater-reports/2017%20Annual%20groundwater%20monitoring%20and%20corrective%20action%20report.pdf>.

¹⁸⁷ Water & Environmental Technologies, Groundwater Monitoring & Corrective Action Report FGD Pond 2 – Naughton Power Plant, at 17 (Jan. 2019), <https://www.pacifiCorp.com/content/dam/pcorp/documents/en/pacifiCorp/ccr/naughton/fgd-pond-2/groundwater/annual-groundwater-reports/2018%20Annual%20groundwater%20monitoring%20and%20corrective%20action%20report.pdf>.

¹⁸⁸ Water & Environmental Technologies, Corrective Measures Assessment FGD Pond 2 – Naughton Power Plant (May 2019), <https://www.pacifiCorp.com/content/dam/pcorp/documents/en/pacifiCorp/ccr/naughton/fgd-pond-2/groundwater/corrective-measures-assessment/Corrective%20Measures%20Assessment.pdf> (attached).

¹⁸⁹ 40 C.F.R. § 257.97(a).

¹⁹⁰ Barr Engineering Co., Semiannual Selection of Remedy Progress Report, Naughton FGD 2 (May 15, 2025), <https://www.pacifiCorp.com/content/dam/pcorp/documents/en/pacifiCorp/ccr/naughton/fgd-pond-2/groundwater/semi-annual-corrective-action-reports/Technical%20Memorandum%20Naughton%20FGD%202%20SoR%20.pdf> (attached).

¹⁹¹ WYDEQ Permit No. 20-209, Naughton Power Plant – FGD Pond #1 and #2 Gravity Drains for the Capture of Contaminated Groundwater (Aug. 26, 2020) (attached).

¹⁹² 42 U.S.C. § 6945(d)(1)(B).

¹⁹³ It is likely that groundwater monitoring data submitted to WDEQ long before 2017 similarly revealed impacts from coal ash.

constituents”¹⁹⁴ and in 2018 that “arsenic, cadmium, molybdenum, and radium exceeded their groundwater protection standards.”¹⁹⁵ In 2020, PacifiCorp published a Remedy Selection Report for the Ash Pond Unit, where “the primary element of the selected remedy is closure by removal... If the results/trends from groundwater monitoring demonstrate expansion of the groundwater plume, a groundwater capture system will be installed as an additional remedial step.”¹⁹⁶ This does not meet the requirements of the Federal CCR Rules to “remove from the environment as much of the contaminated material that was released from the CCR unit as is feasible.”¹⁹⁷ Groundwater at the site has been contaminated, and the plume does not need to expand in order to necessitate capture and cleanup. As of October 2025, while ash has been removed from the unit, new groundwater exceedances for arsenic and molybdenum are still being detected by the groundwater monitoring system.¹⁹⁸

4. *Basin Electric Power Cooperative’s Laramie River Station -- deficient remedy process*

Groundwater monitoring conducted by Basin Electric Power pursuant to the 2015 CCR Rule at Laramie River Station’s Ash Pond 1 indicates the pond is contaminating groundwater. In 2017, monitoring revealed that “boron at monitoring well MW-38B and calcium, chloride, sulfate, and TDS at monitoring wells MW-21B and MW-38B have SSIs over background”¹⁹⁹ and in 2018 that “lithium and molybdenum at monitoring well MW38B exceed their respective GWPSs.”²⁰⁰ These contaminants continue to exceed groundwater protection standards in their

¹⁹⁴ Water & Environmental Technologies, Groundwater Monitoring & Corrective Action Report Ash Pond – Dave Johnston Power Plant, at 19 (Jan. 2018), https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/ccr/dave-johnston/ash-pond/groundwater/annual-reports/GroundwaterMonitoringandCAReportAshPond_2017.pdf.

¹⁹⁵ Water & Environmental Technologies, Groundwater Monitoring & Corrective Action Report Ash Pond – Dave Johnston Power Plant, at 17 (Jan. 2019), <https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/ccr/dave-johnston/ash-pond/groundwater/annual-reports/2018%20Groundwater%20Monitoring%20and%20CA%20Report%20Ash%20Pond.pdf>.

¹⁹⁶ Excerpt of Water & Environmental Technologies, Remedy Selection Report Ash Pond – Dave Johnston Power Plant, at 1 (Oct. 2020), <https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/ccr/dave-johnston/ash-pond/groundwater/remedy-selection-report.pdf> (attached).

¹⁹⁷ 40 C.F.R. § 257.97(b)(4).

¹⁹⁸ PacifiCorp, Dave Johnston Ash Pond CCR Semiannual Assessment Monitoring Second Half 2024 Appendix IV Ground Water Protection Standard Notification (Mar. 3, 2025), <https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/ccr/dave-johnston/ash-pond/groundwater/appendix-iv-exceedance/03.04.25.Dave%20Johnston%20Ash%20Pond%20Second%20half%202024%20CCR%20Assessment%20Ground%20Water%20Standard%20Notification.pdf> (attached).

¹⁹⁹ AECOM, First Annual Groundwater Monitoring and Corrective Action Report, 2016-2017 Laramie River Station, at 6-1 (Jan. 31, 2018), https://www.basinelectric.com/_files/pdf/Coal_ash/LRS-First-Annual-Groundwater-Monitoring-and-Corrective-Action-Report-2018.pdf.

²⁰⁰ AECOM, 2018 Annual Groundwater Monitoring and Corrective Action Report Laramie River Station, at 3-3 (Jan. 31, 2019), https://www.basinelectric.com/_files/pdf/Coal_ash/LR-2018-Annual-Groundwater-Monitoring-and-Corrective-Action-Report.pdf.

most recent round of monitoring in 2024.²⁰¹ Basin Electric Power Cooperative filed its Remedy Selection Report in 2020,²⁰² but the recovery well system central to this plan was not placed into full-time operation until July 2024.²⁰³ Basin Electric failed to remedy groundwater contamination at the site in a timely manner, and oversight from WDEQ has not led the utility into compliance with the Federal CCR Rules.

The evidence clearly shows that Wyoming has illegally and indefinitely delayed its exercise of its permitting authority, continuously refused to explain how it will enforce its regulations, and failed to enforce those same requirements at every coal plant in the state. WDEQ has failed to administer the state programs governing CCR in a manner that ensures compliance with Federal CCR requirements both before and after the Chapter 18 regulations were promulgated. Thus, EPA should not approve the Wyoming program because doing so would be arbitrary and capricious and violate the WIIN Act.

VI. APPROVING WYOMING'S PROGRAM WOULD CREATE A REGULATORY SYSTEM WITH INADEQUATE PUBLIC PARTICIPATION THAT IMPAIRS THE PUBLIC'S ENFORCEMENT RIGHTS.

Public participation and the public's right to enforce the law are central to RCRA regulatory programs, as well as to state and (prospective) federal CCR permit programs. RCRA makes clear that public participation shall be provided for in the "development, revision, implementation and enforcement" of all RCRA programs.²⁰⁴ Moreover, EPA has determined that "[t]he core components of public participation in the permitting decision-making process are public notice, opportunity for public comment, opportunity for a public meeting or hearing, and making final decisions known to the public, including providing written responses to public comments."²⁰⁵ The Wyoming program fails to meet these criteria and is less protective than the federal requirements. It does not require that all relevant materials in the permitting decision-making process be made publicly available, does not require adequate public notice, and does not provide adequate opportunity for public meetings or hearings.

²⁰¹ Excerpt of AECOM, 2024 Annual Groundwater Monitoring and Corrective Action Report Laramie River Station, at tbl. 1 (Jan. 31, 2025), https://www.basinelectric.com/_files/pdf/Coal_ash/2025-Final-LRS-2024-Annual-GMCA-Report_01312025.pdf (attached).

²⁰² Excerpt of AECOM, Groundwater Remedy Selection Report Laramie River Station (July, 2020), https://www.basinelectric.com/_files/pdf/Coal_ash/LRS-Gourndwater-Remedy-Selection-Report_9July2020.pdf (attached).

²⁰³ Excerpt of AECOM, 2024 Annual Groundwater Monitoring and Corrective Action Report Laramie River Station, at 4-1 (Jan. 31, 2025), https://www.basinelectric.com/_files/pdf/Coal_ash/2025-Final-LRS-2024-Annual-GMCA-Report_01312025.pdf (attached).

²⁰⁴ 42 U.S.C. § 6974(b)(1).

²⁰⁵ EPA, State Coal Combustion Residuals Permit Programs: Considerations for Developing Public Participation Opportunities Memorandum, at 3 (Mar. 20, 2023) ("EPA State Public Participation Memo") (attached).

A. Wyoming’s Program Does Not Provide Public Access to Key Permitting Documents That Are Essential to Understanding a Site’s Compliance Requirements and Whether They Are Being Met.

While the Trump administration has paid lip service to the concept that the public’s right to enforce the law is central to RCRA regulatory programs, this EPA has overlooked huge gaps in the Wyoming program that will curb citizen enforcement and meaningful participation. EPA stated in its Proposed Approval, “RCRA section 7004(b), which applies to all RCRA programs, directs that ‘public participation in the development, revision, implementation, and enforcement of any . . . program under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States.’”²⁰⁶ Nevertheless, EPA’s analysis of the deficiencies of the Wyoming program are nowhere in sight in its Proposed Approval.

Under RCRA Section 7002, “any person may commence a civil action . . . against any person . . . who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order” issued pursuant to RCRA.²⁰⁷ The Federal CCR Rules contain reporting provisions that require owners and operators of CCR units to publish extensive information about their units.²⁰⁸ EPA was clear when it promulgated the 2015 CCR Rule that these reporting requirements are meant to effectuate the public’s enforcement rights under RCRA:

EPA has developed a number of provisions designed to facilitate citizens to enforce the rule pursuant to RCRA section 7002. Chief among these is the requirement to publicly post monitoring data, along with critical documentation of facility operations, so that the public will have access to the information to monitor activities at CCR disposal facilities.²⁰⁹

EPA underscored that enforcement by the public is fundamental to ensure compliance with the Federal CCR Rules and concluded that, without such enforcement, the rule would not satisfy RCRA’s protectiveness standard:

The Agency cannot conclude that the regulations promulgated in this rule will ensure there is no reasonable probability of adverse effects on health or the environment unless there is a mechanism for states and citizens, as the entities responsible for enforcing the rule, to effectively monitor or oversee its implementation.²¹⁰

²⁰⁶ Wyoming Proposed Approval, 90 Fed. Reg. at 42,349 (quoting 42 U.S.C. § 6974(b)(1)).

²⁰⁷ 42 U.S.C. § 6972(a).

²⁰⁸ See generally 40 C.F.R. § 257.107.

²⁰⁹ 2024 Legacy Rule, 89 Fed. Reg. at 48,788 (quoting the preamble to the 2015 CCR Rule, 80 Fed. Reg. at 21,335).

²¹⁰ 2015 CCR Rule, 80 Fed. Reg. at 21,338; see also *id.* at 21,426–27 (“EPA believes that it cannot conclude that the RCRA subtitle D regulations will ensure that there is no reasonable probability of adverse effects on health or the environment, unless there are mechanisms for states and citizens to monitor the situation . . . so they can determine when intervention is appropriate.”); *id.* at 21,339 (“[A]

Since promulgating the 2015 CCR Rule, EPA has emphasized that citizen enforcement remains a key mechanism for ensuring compliance, including in approved state programs.²¹¹ Primacy does not change the essential role of citizen enforcement and does not change the critical importance of reporting requirements to enable it.

For the same reasons, transparency and public participation in CCR permitting is essential for implementing RCRA's citizen enforcement requirements. Unless the public has access to documents demonstrating or explaining how CCR units will achieve compliance with CCR regulations, the public cannot exercise its enforcement rights under RCRA Section 7002.

EPA states in its Proposed Approval:

[I]t is EPA's judgment that an adequate State CCR permit program will ensure that: (1) Documents for permit determinations are made available for public review and comment; (2) Final determinations on permit applications are made known to the public; and (3) Public comments on permit determinations are considered and significant comments are responded to in the permit record.²¹²

EPA "preliminarily determined that the Wyoming approach to public participation requirements provides adequate opportunities for public participation in the permitting process sufficient to meet the standard for program approval."²¹³ EPA further concluded that Wyoming's program provides for "an adequate level of citizen involvement in the enforcement process" because:

WS section 35-11-904(c)(ii) provides that any person may intervene as a matter of right when WDEQ, through the attorney general, has commenced a civil action to require compliance with the provisions of the Act, or any rule, regulation, order or permit issued pursuant to the Act. Additionally, WDEQ has the authority under WS 35-11-701(a) to investigate citizen complaints concerning violations.²¹⁴

key component of EPA's support for determining that the rule achieves the statutory standard is the existence of a mechanism for states and citizens to monitor the situation, such as when groundwater monitoring shows evidence of potential contamination, so that they can determine when intervention is appropriate. The existence of effective oversight measures provides critical support for the statutory finding").

²¹¹ See Texas: Approval of State Coal Combustion Residuals Permit Program, 86 Fed. Reg. at 33,900 ("[T]he right to file a RCRA citizen suit pertaining to CCR facilities in Texas is unaffected by EPA's approval Citizen suits are authorized by RCRA section 7002(a). Citizens' ability to file RCRA citizen suits are not affected by RCRA section 4005(d), establishing a process for approving state CCR programs. See 42 U.S.C. § 6945(d)(7). Likewise, EPA's approval of the Texas CCR permit program does not affect citizens' ability to file RCRA citizen suits.").

²¹² Wyoming Proposed Approval, 90 Fed. Reg. at 42,352; see also EPA State Public Participation Memo at 2 (attached) (noting that although 40 C.F.R. § 239.6 applies to the approval of state MSWLF programs rather than state CCR permit programs, the specific criteria, including the requirement that "documents for permit determinations are made available for public review and comment," provide a helpful framework to evaluating state permit programs).

²¹³ Wyoming Proposed Approval, 90 Fed. Reg. at 42,353.

²¹⁴ *Id.* at 42,354.

However, EPA's determination is wrong. Wyoming's program does not require permits or essential permitting information to be made available to the public, a failure that fundamentally undermines both public participation and enforcement. Facilities seeking a CCR permit in Wyoming must provide certain documentation with their permit applications. For example, facilities must provide:²¹⁵

- CCR fugitive dust control plans;²¹⁶
- Run-on and run-off control system plans for CCR landfills;²¹⁷
- Initial inflow design flood control system plans;²¹⁸
- Documentation related to location restrictions;²¹⁹
- Closure plans;²²⁰
- Post-closure plans;²²¹
- Documentation related to liner design criteria;²²² and
- Documentation related to groundwater monitoring.²²³

WDEQ then reviews and issues a CCR permit based on this and other information in the application.²²⁴

Yet, Wyoming's program does not require draft permits, permit applications, or other permitting documents relied upon and referenced in the permits and applications to be made publicly available, despite claims to the contrary made by EPA (in its Proposed Approval) and Wyoming (in its Narrative Statement).²²⁵ None of the regulations they reference in support of their position requires that the public have access to these essential permitting documents:

- Chapter 18 section 11(c)(i) requires final permits to "be placed to the owner or operator's CCR website within five days." It does not require public access to the draft permits, permit applications, or other permit documents relied upon and referenced in

²¹⁵ 020-18 Wyo. Code R. § 18-4(d).

²¹⁶ *Id.* § 18-8(a).

²¹⁷ *Id.* § 18-8(b).

²¹⁸ *Id.* § 18-8(c).

²¹⁹ *Id.* § 18-6.

²²⁰ *Id.* § 18-10(c).

²²¹ *Id.* § 18-10(e).

²²² *Id.* § 18-7.

²²³ *Id.* § 18-9.

²²⁴ Wyo. Stat. § 35-11-502(h).

²²⁵ Wyoming Proposed Approval, 90 Fed. Reg. at 42,352; Wyo. Narrative Statement at 14.

the permits. Moreover, it only requires an owner or operator to make the final permit publicly available after the permitting process has concluded.

- Chapter 1 section 2(c) requires permit applicants to “provide written notice” to interested parties and “cause a written notice to be published once a week for two consecutive weeks in a newspaper of general circulation within the county where the applicant plans to locate the facility” that a permit application is under WDEQ review. It does not require public access to permit applications or other permit documents relied upon and referenced in the applications.
- Wyo. Stat § 35-11-502(g) requires permit applicants to “give written notice of the application to the county where the applicant plans to locate the facility and to any municipalities which may be affected by the facility” and publish notice “once a week for two (2) consecutive weeks in a newspaper of general circulation within the county where the applicant plans to locate the facility.” It does not require public access to permit applications or other permit documents relied upon and referenced in the applications.
- Wyo. Stat § 35-11-502(j) requires permit applicants to “give written notice of the proposed permit to the governing board of any county where the applicant plans to locate the facility and to any governing board of municipalities which may be affected by the facility” and publish written notice of the proposed permit “in a newspaper of general circulation within the county where the applicant plans to locate the facility . . . once a week for two (2) consecutive weeks commencing within fifteen (15) days after being notified by the administrator that the application is suitable for publication.” It does not require public access to the draft permits or other permit documents relied upon and referenced in the permits.

As a matter of practice, WDEQ does not provide access to permit applications, draft permits, final permits, or other permit documents relied upon and referenced for CCR units. While WDEQ claims that these documents can be accessed via a public records request, that process can be difficult, extremely time consuming, untimely, and, for many, prohibitively expensive (primarily because WDEQ does not provide an option for a fee waiver).

Commenters’ efforts to access relevant permits and permit applications for Wyoming’s CCR landfills and surface impoundments are illustrative of this deficiency. Upon discovering that the relevant CCR permits and permit documentation were not available online, Commenters submitted a records request to WDEQ on September 18, 2025.²²⁶ WDEQ staff indicated that Commenters would need to narrow the scope of this request to ensure that they receive the documents before the closure of the public comment period on November 3, 2025. A narrowed request was submitted and WDEQ produced roughly 451 documents on October 16, 2025. However, WDEQ’s production failed to include several types of documents requested, including the most current permits for all 3 CCR landfills and all 16 CCR surface impoundments, including the surface impoundment WDEQ has stated is under construction; all Chapter 18 permit applications for those same CCR units; and closure permits for two CCR units that have either

²²⁶ See <https://wydeq.nextrequest.com/requests/25-766> for a full timeline of the public records request.

closed or are in the process of closing.²²⁷ In addition, the documents were neither clearly labeled nor easy to identify because file names did not identify the facility, subject matter/record type, or date.

On October 20, 2025, Commenters notified WDEQ of the missing responsive records and asked WDEQ staff to confirm whether WDEQ had the records requested by Commenters on file.²²⁸ On October 29, 2025, WDEQ responded by releasing five additional records related to the new CCR surface impoundment under construction at Johnston and confirmed that “it has produced all responsive records with no documents being withheld pursuant to the Wyoming Public Records Act.”²²⁹ When Commenters simply asked whom they could direct questions about permitting processes to within the Water Quality and Solid and Hazardous Waste Divisions of WDEQ, the Wyoming Attorney General’s Office stated, “the Wyoming public records act is not a means for someone to require an agency to answer questions about its regulatory program or permitting processes. Accordingly, DEQ will not be answering those questions.”²³⁰

Although WDEQ stated that it had completed its response to the request (for a second time), the very next day, the Wyoming Attorney General’s Office followed up to inform Commenters that WDEQ was in the process of producing additional documents and eventually produced 42 new responsive records.²³¹ As further discussed in Section V, these records consisted of documents detailing discussions between power plant owners and WDEQ related to extensions of Chapter 18 permit application deadlines, which WDEQ granted, for a majority of the CCR units in the state. As evident by Commenters’ communications with WDEQ and their process of releasing records, even after stating multiples times that it had produced all responsive records, it is unclear if WDEQ has actually produced all records responsive to Commenters’ request. In any event, this is a clear example of Wyoming’s inability to administer its CCR regulations and ensure adequate public participation.

In addition to the six weeks it took for WDEQ to provide a complete response to Commenters’ record request, Commenters were charged \$308.05 for the records they received.²³² A public participation program that requires the public to submit a records request, wait for WDEQ to search for and produce records, review complex permit materials and compliance documentation, and draft substantive written comments within a 30-day comment period is unacceptable and insufficient. This process simply cannot be completed within the 30-day comment period, which is what EPA told WDEQ in March 2022.²³³

Commenters’ first-hand failure to obtain critical documents from WDEQ through a records request revealed the state’s time-consuming, costly and ineffective process. Moreover, if

²²⁷ See Email from Ozaeta to WDEQ re: Public Records Request (Oct. 20, 2025) (attached).

²²⁸ See Email from WDEQ to Ozaeta re: Public Records Request (Oct. 29, 2025) (attached).

²²⁹ *Id.*

²³⁰ See Email from Wyo. AG’s Office to Ozaeta re: Public Records Request (Oct. 30, 2025) (attached).

²³¹ See Email from Wyo. AG’s Office to Ozaeta re: Public Records Request (Oct. 31, 2025) (attached); see also <https://wydeq.nextrequest.com/requests/25-766> (displaying 42 documents uploaded on Oct. 31, 2025).

²³² See Email from WDEQ to Ozaeta re: Payment confirmation (Oct. 14, 2025) (attached).

²³³ See EPA Comments on Wyoming CCR Regulations – March 2022, at 1 (attached).

lawyers cannot successfully navigate the public records request process, it is highly unlikely that the typical Wyomingite will. The state's bar to accessing CCR permitting records contravenes EPA's proposed determination that Wyoming's program "will ensure that: (1) Documents for permit determinations are made available for public review and comment,"²³⁴ a proposed determination that flies in the face of EPA's prior conclusion that public access to "critical documentation of facility operations" is "[c]hief among" the Federal CCR Rules' provisions "designed to facilitate citizens to enforce the [federal CCR] rule pursuant to RCRA section 7002."²³⁵ It is also wholly inconsistent with RCRA's direction that "public participation in the . . . implementation, and enforcement" of the Federal CCR Rules "be provided for, encouraged, and assisted"²³⁶

Under the Federal CCR Rules, compliance documents must be posted online and readily available for free to anyone with internet access.²³⁷ EPA has also identified "web-posting electronic documents" as a compliant option for making permit applications and supporting documents available for public review.²³⁸ Moreover, during the Agency's review of the Wyoming Program, EPA flagged the absence of a requirement that permit materials be posted on WDEQ's website as problematic. However, WDEQ claimed without explanation that it was somehow not possible to make these permit materials available on its website.²³⁹ Without timely access, through some avenue, to the permits and plans with which permittees are required to comply, it is impossible for the public to comment upon or understand the site-specific conditions required by a permit, and it is impossible for the public to know whether a unit's posted compliance documents satisfy its permit terms.

EPA has repeatedly emphasized to WDEQ the importance of public participation in the CCR permitting process. In fact, in 2022, EPA specifically pointed to the lack of adequate public access to documents in the Wyoming program and requested revision. EPA questioned, "if permit documents are not posted on the website, how are they made available to interested public? If the public has to submit an information request, that seems unworkable within a 30-day comment period."²⁴⁰ And this is exactly the fatal problem encountered by Commenters during this comment period.

Further, in March 2023, EPA augmented its Coal Combustion Residuals State Permit Program Interim Final Guidance (August 2017) to emphasize the importance of guaranteeing public participation opportunities in state permitting programs. To this end, EPA published a memorandum entitled, "State Coal Combustion Residuals Permit Programs: Considerations for Developing Public Participation Opportunities."²⁴¹ WDEQ received this memorandum on March

²³⁴ Wyoming Proposed Approval, 90 Fed. Reg. at 42,352.

²³⁵ 2024 Legacy Rule, 89 Fed. Reg. at 48,788 (quoting the preamble to the 2015 CCR Rule, 80 Fed. Reg. at 21,335).

²³⁶ 42 U.S.C. § 6974(b)(1).

²³⁷ 40 C.F.R. §§ 257.105, 257.107.

²³⁸ EPA State Public Participation Memo at 3 (attached).

²³⁹ See EPA Dec. 2023 Letter at 2 ("In February 2022, the EPA asked WYDEQ on a video call if the State could add permits and permit-related documents to the State's CCR website The State responded that it cannot post the documents to the State's CCR website[.]").

²⁴⁰ EPA comments on Wyoming CCR Regulations – March 2022 at 1 (attached).

²⁴¹ EPA State Public Participation Memo at 6–7 (attached).

20, 2023.²⁴² In the memorandum, EPA emphasizes precise requirements, lacking in the Wyoming program, that would ensure that “documents for permit determinations are made available for public review and comment.”²⁴³ EPA recommended making supporting documents available for public inspection by “posting electronic documents or including paper copies of documents in a public place that is most convenient and accessible to the public (such as a library or town hall).”²⁴⁴ Wyoming has done neither.

Wyoming’s lack of access to public documents is exacerbated by the program’s short 30-day comment period. The EPA State Public Participation Memo also speaks to this issue, recommending a “minimum 45-day public comment period, which is what is included in the Federal CCR permit program proposed rule.”²⁴⁵ EPA also noted that 40 C.F.R. § 124.10(b) states that a 60-day comment period may be appropriate for complicated proceedings.²⁴⁶ In fact, once EPA finalizes the federal permitting rule,²⁴⁷ which it is expected to do in 2026, Wyoming will need to amend its program to be consistent with the longer public comment period, as required by the WIIN Act.²⁴⁸ Therefore it makes sense to make this change now.

The Wyoming program’s public participation process does not meet the public participation and enforcement requirements of RCRA and—given the importance of citizen enforcement to ensuring compliance with the Federal CCR Rules and RCRA’s underlying protectiveness standard—also renders Wyoming’s program not “at least as protective as” the Federal CCR Rules.²⁴⁹ Wyoming’s program must be changed to require public access via internet posting to all essential permitting documents, including draft permits, final permits, and permit applications and other permitting materials, so that the public can meaningfully comment on permit applications, understand a permitted site’s compliance requirements, and identify when a site is violating those requirements. In addition, the public comment period must be extended to at least 60 days to allow access to additional permit documents that may be relevant to the permitting decision.

B. Other Aspects of Wyoming’s Program Render Its Public Participation and Enforcement Requirements Inadequate.

Other aspects of Wyoming’s public participation requirements similarly fall short of what is necessary for the public to enforce state coal ash permits consistent with both RCRA’s citizen enforcement provisions and protectiveness standard and EPA’s prior statements about the importance of citizen enforcement in coal ash permitting.

²⁴² Email from Richard Huggins, EPA, to Jody Weikart, WDEQ *et al.* (Mar. 20, 2023) (attached).

²⁴³ EPA State Public Participation Memo at 2.

²⁴⁴ *Id.* at 3.

²⁴⁵ *Id.* at 3.

²⁴⁶ *Id.*

²⁴⁷ EPA, 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) (“Proposed Federal CCR Permit Program”).

²⁴⁸ 42 U.S.C. § 6945(d)(1)(D)(i)(II).

²⁴⁹ *Id.* § 6944(a); *see* 2015 CCR Rule, 80 Fed. Reg. at 21,338, 21,426–27, 21,339.

The Wyoming program only requires public notice of permit applications and proposed permit decisions to be published “in a newspaper of general circulation within the county where the applicant plans to locate the facility.”²⁵⁰ This is insufficient to ensure adequate public notice. This requirement significantly limits the number of people who will be notified, how quickly they will be notified, and fails to “us[e] traditional and new media effectively.”²⁵¹ The public notices are very short documents with small file sizes that can very easily be published on the permit applicant’s and WDEQ’s websites. In addition, WDEQ states that written notices will be published on the WDEQ website²⁵² so it is unclear why the regulations do not make it a requirement. Wyoming’s regulations must be amended to require that (1) all owners and operators of CCR units post all permit applications, materials relied upon or referenced in the applications, permitting decisions, and draft/final permits on their publicly accessible CCR website; and (2) WDEQ post all public notices, permitting decisions, and draft/final permits on its publicly accessible website.

The Wyoming program does not provide an adequate opportunity for a public hearing regarding a proposed permit decision. Wyo. Stat § 35-11-502(k) requires a public hearing to be held if “substantial written objections” to the proposed permit are filed with the director within 30 days of published notice. WDEQ does not explain what constitutes “substantial written objections,” and the ability of the public to submit substantial written objections is undermined by the very limited information they will have access to and the very limited amount of time they will have to evaluate a proposal and articulate their objections to it. Wyoming’s regulations also fail to provide any mechanism for the public to formally request a public hearing.²⁵³ EPA has noted that some states provide for a public hearing based on “a significant degree of public interest” rather than objections.²⁵⁴ Therefore, Wyoming’s program should be amended to, at a minimum, provide for a public hearing when there is expressed public interest in holding a public hearing.

Wyo. Stat § 35-11-502(k) also states that, if a public hearing is held, “[t]he hearing shall be conducted as a contested case in accordance with the Wyoming Administrative Procedure Act, and right of judicial review shall be afforded as provided in that act.” However, it is unclear whether a final permit decision will be subject to judicial review if a public hearing is not held.²⁵⁵ Wyoming’s program and/or Narrative Statement should be amended to specify whether a public hearing as well as attendance at a public hearing is required to appeal a final permit decision.

²⁵⁰ 020-18 Wyo. Code R. § 1-2(c); Wyo. Stat § 35-11-502(g); Wyo. Stat § 35-11-502(j).

²⁵¹ See EPA State Public Participation Memo at 2-3 (citing EPA, Coal Combustion Residuals State Permit Program Interim Final Guidance Document, at 1-7 (Aug. 2017)) (attached).

²⁵² Wyo. Narrative Statement at 10.

²⁵³ See WDEQ Jan. 2024 Response at 4-5; WDEQ Response to EPA, Docket ID No. EPA-HQ-OLEM-2025-0221-0042, at 4 (Jun. 20, 2025) (“WDEQ June 2025 Response”). In response to EPA’s questions about the threshold for a determination that a public hearing will be held, WDEQ failed to provide an explanation.

²⁵⁴ EPA State Public Participation Memo at 4 (attached).

²⁵⁵ See WDEQ June 2025 Response at 5. In response to EPA’s questions about a person’s ability to appeal a permitting decision, WDEQ failed to provide an explanation.

Finally, the Wyoming program allows significant permit modifications without any public participation because of its overly narrow definition of “major amendment,” the standard that triggers public review. Under the Wyoming program, major amendments do not include changes to detailed compliance approaches in site-specific plans required by the Federal CCR Rules, such as changes to groundwater monitoring plans or corrective action plans.²⁵⁶ Determining whether these plans will achieve compliance with the Federal CCR Rules or Wyoming’s program requires judgment and consideration of facility-specific conditions. These are the most critical decisions WDEQ makes at the time of permit issuance, decisions that are essential to protecting public health, and are the ones that benefit the most from public input. Requiring public input on decisions WDEQ makes at the time of initial permit issuance but then allowing WDEQ to supersede those decisions without public input through a permit modification undermines any meaningful opportunity for public participation.

While Chapter 18 section 3(c)(ii) includes a catch-all public input requirement for a “facility modification . . . likely to . . . reduce the capacity of the facility to protect human health and the environment,” this language is not sufficiently clear and gives WDEQ virtually unlimited discretion to determine whether and which changes to detailed compliance approaches require public engagement. Without clear language in Wyoming’s program stating that changes to detailed compliance approaches in site-specific plans are “major amendments” or specifying what types of changes constitute “minor amendments,” WDEQ could make such changes—allowing sites to meet less protective criteria than state or federal coal ash requirements—without ever providing the public with notice or an opportunity to comment on this change. As EPA has noted, the proposed Federal CCR permit program²⁵⁷ defines “major modifications” as:

[A]ll 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.²⁵⁸

Examples of potentially major modifications under the proposed federal CCR permit program include:

²⁵⁶ 020-18 Wyo. Code R. § 18-3(c)(ii). (“Major amendment” means a change to any solid waste management facility location, design or construction, or to any operating, monitoring, closure or post-closure activities, involving one or more of the following items: (A) The total permitted volumetric capacity of the facility is to be increased by more than five percent; (B) The effectiveness of any liner, leachate collection or detection system, gas detection or migration system, or pollution control or treatment system may be reduced; (C) The facility modification will, in the judgment of the Administrator, be likely to alter the fundamental nature of the facility's activities or reduce the capacity of the facility to protect human health and the environment[.]”).

²⁵⁷ Proposed Federal CCR Permit Program, 85 Fed. Reg. 9940, 9986–87.

²⁵⁸ EPA State Public Participation Memo at 6 (attached) (quoting Proposed Federal CCR Permit Program, 85 Fed. Reg. at 9986).

- (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 postclosure 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.²⁵⁹

It is also important that the Wyoming program add a definition for the term “minor amendment,” especially since minor amendments will not be subject to the program’s public participation requirements.²⁶⁰ The proposed federal CCR permit program defines “minor modifications” as:

[T]hose 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.

²⁵⁹ EPA State Public Participation Memo at 6–7 (attached) (quoting Proposed Federal CCR Permit Program, 85 Fed. Reg. at 9986–87).

²⁶⁰ See 020-18 Wyo. Code R. §§ 18-4(f)(ii)(A).

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.²⁶¹

Examples of potential minor modifications under the proposed federal CCR permit program include:

- (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.²⁶²

The Wyoming program should be amended to clarify that major amendments, such as those included in the proposed federal CCR permit program, are subject to the same public participation requirements as permit applications. In addition, the Wyoming program should add a definition of the term “minor amendment” and include illustrative examples, as suggested above. Once the EPA’s final permitting rule is finalized, Wyoming will be required to make

²⁶¹ EPA State Public Participation Memo at 7 (attached) (quoting Proposed Federal CCR Permit Program, 85 Fed. Reg. at 9986).

²⁶² *Id.*

these changes in order to bring the Wyoming program in line with the new federal regulations. Making these changes now will obviate the need for future modifications and ensure that these important provisions apply to permit modifications in the meantime.

VII. CONCLUSION

For the reasons discussed above, we urge EPA to deny Wyoming's application for primacy over coal ash permitting.

Sincerely,

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