



Alabama Pushes Back on EPA Proposed CCR Program Denial

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In early August 2023, the U.S. Environmental Protection Agency (EPA) issued a proposed denial of Alabama's permit program to manage coal combustion residuals (CCR) in landfills and surface impoundments within the state. The decision evidently came as a surprise to the Alabama Department of Environmental Management (ADEM), the environmental regulatory agency that intends to manage Alabama's CCR permitting program, as ADEM had been communicating and working with EPA on CCR program efforts for several years prior to the announcement. In addition, other states that have submitted applications – Oklahoma, Georgia, and Texas – have all received CCR permitting program approval from EPA. The proposed denial of Alabama's program is an unprecedented move by EPA.

The published document includes a lengthy discussion regarding EPA's basis for the proposal, concluding that Alabama's CCR permit program does not meet the standard for approval under federal law. EPA accepted public comments on the proposal for sixty days, during which time EPA held in-person and virtual public hearings. The public comment period ended October 13, and EPA is now reviewing comments submitted.

As expected, EPA received substantial comments from a variety of interested persons. ADEM, being the key stakeholder, submitted a hefty comment package grouping remarks into four major areas of concern, which the agency outlines as follows:

1. EPA's review of ADEM's program approval application was disjointed, flawed, and quite possibly inappropriately influenced

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by ex parte analyses not timely provided to ADEM and not known to the general public. EPA provided a misleading portrayal of the review process to the public in the proposed denial.

2. EPA's unfavorable review of ADEM's CCR program relies in large part on an incorrect and novel interpretation of the federal regulations for closure, namely its arbitrary and capricious reinterpretation of the term "infiltration." This error infects the whole proposed action.
3. EPA's new interpretations are inconsistent with the requirements of the 2015 CCR Final Rule and the WIIN Act.
4. EPA's review of ADEM's CCR permits was untimely, unprofessional, incomplete, and deeply flawed.

ADEM concludes by requesting that EPA withdraw the proposed denial and approve Alabama's CCR permit program. All eyes are now on the EPA to see how these and other comments may affect EPA's ultimate decision.

We will continue monitoring for further developments. A full copy of ADEM's comment submission can be found [here](#).