

**COMMENTS BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
REGARDING THE PROPOSED RULEMAKING ON DISPOSAL OF COAL COMBUSTION
RESIDUALS FROM ELECTRIC UTILITIES: AMENDMENTS TO THE NATIONAL
MINIMUM CRITERIA (PHASE ONE); EPA DOCKET ID NO. EPA-HQ-OLEM-2017-0286**

I. Summary of Notice

On March 15, 2018, the United States Environmental Protection Agency (EPA) issued proposed amendments in the *Federal Register* concerning the disposal of Coal Combustion Residuals (CCR) from Electric Utilities. The amended regulations would:

- address four provisions of the final rule remanded to EPA by the U.S. Court of Appeals for the D.C. Circuit on June 14, 2016;
- provide states with approved authorization programs under the Water Infrastructure Improvements for the Nation (WIIN) Act the ability to establish certain alternative performance standards; and
- propose one provision regarding the use of CCR during certain closure situations based on comments received after issuance of the final rule.

II. Comments

A. General Comments

The Texas Commission on Environmental Quality (TCEQ) has regulated CCR landfills and surface impoundments as non-hazardous industrial solid waste units under TCEQ's rules for many years. TCEQ supports EPA's commitment and efforts to provide states with the ability to incorporate flexibility into state CCR permit programs. TCEQ and other states seeking approval for CCR authorization programs should be able to use existing state authorities when possible to minimize state rulemaking and to promote consistency among programs. States should be able to use pre-existing, protective risk-based remediation programs for CCR sites as they would at other similarly situated remediation sites, including those managing hazardous constituents.

B. Specific Comments

1. TCEQ recommends 40 CFR Sections 257.97: Selection of Remedy and 257.98: Implementation of the Corrective Action Program be expanded to allow states with approved CCR programs to utilize their existing risk-based remediation program regulations. The Texas Risk Reduction Program (TRRP) regulations at 30 Texas Administrative Code (TAC) Chapter 350 apply to state regulated remediation programs, including hazardous waste corrective action, industrial non-hazardous corrective

action, and state superfund. These regulations have been used and are currently in use at CCR sites in Texas. TRRP is protective of human health, safety, and the environment. An approved CCR authorization program in Texas should be able to continue utilizing this site-specific, risk based approach for remedial actions at CCR sites in Texas.

2. The TCEQ also recommends that 40 CFR Section 257.99: Corrective Action Procedures to Remedy Eligible Non-Groundwater Releases be expanded to allow states with approved CCR programs to use their existing risk-based remediation program regulations. In Texas, the Spill Prevention and Control Rules at 30 TAC Chapter 327 and TRRP are used to address spills of reportable quantities of wastes. These regulations have been used and are currently in use at CCR sites in Texas; are protective of human health, safety, and the environment; and provide enforceable technical standards to address non-groundwater releases.