

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 517. DISPOSAL OF COAL COMBUSTION RESIDUALS FROM
ELECTRIC UTILITIES**

Before the Solid Waste Management Advisory Council at 9:00 a.m. on January 14, 2016.
Before the Environmental Quality Board at 9:30 a.m. on February 19, 2016.

RULE IMPACT STATEMENT

1. **DESCRIPTION:** The Department is proposing to create a new Chapter, Oklahoma Administrative Code (OAC) 252:517 titled *Disposal of Coal Combustion Residuals from Electric Utilities*. The Department is proposing OAC 252:517 in response to the United States Environmental Protection Agency (EPA) promulgating 40 CFR Part 257, Subpart D which prescribes new requirements pertaining to the disposal of coal combustion residuals (CCR) generated from the combustion of coal at electric utilities and independent power producers. The EPA-promulgated regulations are self-implementing and apply to CCR disposal, without any further action by EPA or the Department, but are only enforceable through citizen suits. EPA and the regulated industry are both strongly in favor of DEQ oversight and enforcement, thus necessitating and precipitating this proposed rulemaking. The Department currently regulates the above-referenced CCR disposal, as set out in the Oklahoma Solid Waste Management Act at 27A O.S. § 2-10-101 *et seq.* and the rules promulgated thereunder at OAC 252:515 *Management of Solid Waste*, and also at OAC 252:616 *Industrial Wastewater Systems*. This rulemaking action is necessary to ensure there is only one set of regulatory standards for the disposal of the above-referenced CCR.

DEQ has incorporated the requirements of 40 CFR Part 257, Subpart D in their entirety and inserted, where appropriate, pertinent language to enable DEQ to permit CCR facilities and enforce the new Chapter. The included permitting and enforcement provisions were primarily taken from OAC 252:515. As a result, the proposed rulemaking is a compilation of state and federal requirements currently applicable to CCR disposal. The proposed rulemaking ensures the regulated industry is subject to one set of standards for CCR disposal and allows DEQ to oversee and enforce the standards.

In a separate, related rulemaking, DEQ is proposing to amend the applicability provisions of OAC 252:515, currently applicable to the disposal of CCR generated from the combustion of coal at electric utilities and independent power producers, as a result of this proposed rulemaking.

Related to this proposed rulemaking is a current concern in the state about seismic activity. This rulemaking includes requirements pertaining to seismic impact zones. However, these requirements will not prohibit new or existing CCR landfills from constructing or expanding in a seismic impact zone as long as all structural components of the landfill are designed to resist seismic risks as specified in the rule. Therefore, it is expected that there will continually be sufficient capacity in Oklahoma CCR landfills so that electric utilities do not have to go out of state to dispose of CCR.

2. **CLASSES OF PERSONS AFFECTED:** Owners and/or operators of new and existing disposal facilities receiving only CCR generated from the combustion of coal at electric utilities and independent power producers will be required to comply with the proposed rulemaking.
3. **CLASSES OF PERSONS WHO WILL BEAR COSTS:** Owners and/or operators of new and existing CCR facilities will bear the costs of complying with the proposed rulemaking.
4. **INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES:** No information was provided to the Department by any private or public entities regarding cost impacts for the proposed rulemaking.
5. **CLASSES OF PERSONS BENEFITTED:** The general public, CCR generators, and owners and/or operators of CCR disposal facilities will benefit from the proposed rulemaking as it will regulate the manner in which CCR is disposed and ensure there is only one set of applicable regulatory standards.
6. **PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS:** Owners and operators of CCR disposal facilities are already subject to 40 CFR Part 257, Subpart D, which prescribes new requirements pertaining to the disposal of CCR generated from the combustion of coal at electric utilities and independent power producers. The only probable additional impact will be implementation of financial assurance for CCR facilities that do not currently have financial assurance (i.e. surface impoundments), as authorized and required by 27A O.S. § 2-10-701.
7. **PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS:** No economic impact on political subdivisions is anticipated, as no political subdivisions currently own and/or operate a CCR disposal facility.
8. **POTENTIAL ADVERSE EFFECT ON SMALL BUSINESS:** No significant economic impact on small business is anticipated.
9. **LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE:** None.
10. **PROBABLE COSTS AND BENEFITS TO DEQ TO IMPLEMENT AND ENFORCE:** DEQ will incur and absorb any additional costs associated with the proposed rulemaking, including reviewing additional permit applications and facility inspections. A benefit to DEQ is there will only be one set of applicable standards for the facilities in question.
11. **PROBABLE COSTS AND BENEFITS TO OTHER AGENCIES TO IMPLEMENT AND ENFORCE:** None.
12. **SOURCE OF REVENUE TO BE USED TO IMPLEMENT AND ENFORCE RULE:** The source of revenue to be used to implement and enforce the proposed rulemaking are fees previously established and collected pursuant to 27A O.S. § 2-10-802.

13. **PROJECTED NET LOSS OR GAIN IN REVENUES FOR DEQ AND/OR OTHER AGENCIES, IF IT CAN BE PROJECTED:** None.

14. **COOPERATION OF POLITICAL SUBDIVISIONS REQUIRED TO IMPLEMENT OR ENFORCE RULE:** No cooperation of political subdivisions is required for the proposed rulemaking, as no political subdivisions are currently subject to the proposed rulemaking.

15. **EXPLANATION OF THE MEASURES DEQ TOOK TO MINIMIZE COMPLIANCE COSTS:** DEQ will be absorbing any additional costs associated with the proposed rulemaking and will not be proposing any additional permitting or disposal fees at this time.

16. **DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE:** There are no other such methods of achieving the purpose of the proposed rule.

17. **DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY, AND ENVIRONMENT:** The proposed rulemaking will have a positive effect on public health, safety, and the environment by enabling consistent State regulation of CCR facilities and allow for Department oversight and enforcement of the new standards without the filing of a citizen suit.

18. **IF THE PROPOSED RULE IS DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY, AND ENVIRONMENT, EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULE WILL REDUCE THE RISK:** The proposed rulemaking is designed to ensure proper disposal of CCR and reduce risks posed to human health and the environment when CCR is not disposed of appropriately within the State. The proposed rulemaking allows for DEQ oversight and enforcement of the national minimum criteria for the applicable CCR disposal facilities.

19. **DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY, AND ENVIRONMENT IF THE PROPOSED RULE IS NOT IMPLEMENTED:** If the proposed rulemaking is not implemented, DEQ will not have the authority to oversee and enforce the minimum applicable criteria for the proper disposal of CCR generated at electric utilities and independent power producers. Without DEQ oversight, lawsuits from citizens and the State will be the only mechanism available to ensure compliance with the minimum requirements for CCR disposal.

20. **PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES, INCLUDING QUANTIFIABLE DATA WHERE POSSIBLE:** The proposed rulemaking will impact all business entities that own and/or operate CCR facilities. However, the qualitative and quantitative impact on these business entities will be minimal, as the proposed rulemaking is a compilation of state and federal requirements currently applicable to CCR disposal.

THIS RULE IMPACT STATEMENT WAS PREPARED ON: December 11, 2015.