

# Congress Amends Resource Conservation and Recovery Act and Establishes New Coal Ash Permit Program

Article By:

Joshua R. More

Amy Antonioli

---

On December 16, 2016, **President Obama** signed the ***Water Infrastructure Improvements for the Nation (WIIN) Act*** into law. The WIIN Act is heralded as a bill addressing navigation and flood control, and authorizes funding to address drinking water emergencies in communities like Flint, Michigan. Included in the WIIN Act are amendments to the ***Resource Conservation and Recovery Act (RCRA)*** that create a new state permit program for the management and closure of coal combustion residuals (CCR) units. The amendment authorizes states to submit to the Environmental Protection Agency for approval of a permit program or alternative approval system for regulating CCR units that would operate in lieu of the CCR Rule.<sup>[1]</sup> The amendment allows states to adopt different technical standards from the CCR Rule so long as the standards are at least as protective as the federal rule. In circumstances where a state does not seek approval of a permit program or where EPA denies a state application, the amendments require EPA to adopt a permit program in lieu of the self-implementing rule, provided Congress provides funding for EPA to carry out a permit program. If no permit program is in effect in a state, the CCR Rule will remain self-implementing.

Along with approval of a permit program comes new federal enforcement authority. With the signing of the WIIN Act, EPA now has authority to enforce the implementation of the CCR Rule and an approved state or federal permit program. It is important to note that EPA's enforcement authority is in addition to the ability of environmental groups or states to bring citizen suits.

The passage of the WIIN Act creates opportunities to influence how the CCR Rule is implemented through the development of state and federal permit programs.

---

[1] *Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities*. 80 Fed. Reg. 21301 (Apr. 17, 2015) ("CCR Rule")

Source URL: <https://natlawreview.com/article/congress-amends-resource-conservation-and-recovery-act-and-establishes-new-coal-ash>