**EPA Comments: Florida CCR Draft Package**

Florida Rules: Submitted version as of July 16, 2021

**General:**

1. Florida adopts most of the federal 40 CFR Part 257 regulations via reference as of August 5, 2016, with the August 28, 2020, and November 12, 2020 amendments (which include the Part A and Part B Rules). However, the federal definitions are only adopted as of August 5, 2016. The Part A Rule (August 28, 2020) added a few definitions, including “Eligible unlined CCR surface impoundment,” “Technically feasible,” and “Technically infeasible.” EPA recommends FDEP adopt 40 CFR § 257.53 (the definitions) revised as of August 28, 2020 in order to adopt the relevant terms pertaining to the Part A Rule. If Florida chooses to not adopt these terms, the federal definitions for these terms would continue to apply.
2. Note that § 257.101(b)(1)(ii) was amended by the July 30, 2018 Rule, which Florida does not adopt. Florida does adopt § 257.101(b)(1)(i), which was amended by the Part A Rule. Section 257.101(b)(1)(ii) requires that an owner or operator of an existing surface impoundment must stop placing CCR and non-CCR waste streams into a CCR unit and close the CCR unit if it fails to comply with the location standards specified in §§ 257.61(a), 257.62(a), 257.63(a), and 257.64(a). Section 257.101(b)(1)(i) only addresses the aquifer location standard (§ 257.60(a)), not the other location standards. The omission of § 257.101(b)(1)(ii) appears to be an inadvertent consequence of not adopting the July 2018 Rule. It is recommended that FDEP adopt § 257.101(b)(1) as amended by the July 2018 Rule and the August 2020 Rule. If not, the federal§257.101(b)(1)(ii) will continue to apply to facilities in Florida and Florida will not be approved for this provision.
3. In Florida’s Rule 62-701.804(1)(c), Florida states: “Unless another rule is specifically stated to apply, only Rules 62-4, 62-110, 62-701.300, 62-701.804, and 62-701.805, F.A.C., are applicable to CCR units.” It is clear that Rules 62-701.804 and 62-701.805 are applicable to CCR units. However, it is unclear why Florida has also referenced Rules 62-4, 62-110, and 62.701.300. Are these rules (in their entireties) intended to apply to CCR units? Rule 62-701.805 contains references to only specific provisions of Rules 62-4 and 62-110, not the entire rules, so it would seem like only the specific cited provisions would apply to CCR units. However, all of Rule 62-701.300 is cited in Rule 62-701.805, so presumably all of it applies. Rule 62-701.320 is also cited in its entirety in Rule 62-701.805, but it is not listed in Rule 62-701.804(1)(c) as applying to CCR units. In addition, some of these other Rules are cross-referenced and cited for their public notice provisions in Rule 62-701.805; however, some of the cited rules do not appear to contain any public notice provisions. Further clarification is needed with respect to how FDEP is using its other permitting rules in conjunction with Rule 62-701.805.
4. Rule 62-701.805(12)(a) regarding fees is based on a 5-year permit term. Rule 62-701.805(12)(c) contemplates a fee adjustment for a longer permit term. However, 62-701.805(13)(b)3. says that units that meet the requirements of Section 403.707(3)(c), F.S., shall be issued for a period of 10 years. Note that Section 403.707(3)(c) addresses solid waste management units without a leachate collection system while Section 403.707(3)(b) addresses solid waste management units *with* a leachate collection system (and allows a 20-year permit term). It appears that 403.707(3)(c) does not apply to CCR units. Please explain the reference to Section 403.707(3)(c) and how it applies to CCR units. Please also clarify what FDEP’s default permit term will be for CCR units. The draft Narrative also contains conflicting references to CCR permit terms, citing a 5-year permit term in one location and a 10-year permit term in another.
5. EPA noticed that the Narrative references the issuance of a default permit pursuant to Section 120.60(1), F.S. EPA is interested in learning more about how this default permit would work related to CCR permits.
6. Permits – The regulations do not explicitly require permits for post-closure or corrective action. *See* 62-701.805(11)(a) and (b)(3). EPA recommends that FDEP require a CCR permit for construction, operation, maintenance, modification, closure, corrective action, and post-closure, or clearly state that all of these permitting actions are included as part of the permit.

**Public Participation:**

It appears that Florida’s public participation provisions are, in large part, borrowed from existing regulations. The draft Narrative provides additional details as to public participation, but not all the procedures or regulations cited in the Narrative are actually cited in the CCR permitting regulations. In addition, EPA has several recommendations to enhance public participation in FDEP’s CCR permitting process. The minimum public participation requirements for State CCR Permit Programs are set forth in the August 2017 EPA Guidance, as well as 40 CFR § 239.6. For an example of how another state, which recently received EPA approval for its CCR Permit Program, incorporates public participation into its CCR permitting process, please see the Texas CCR permit program. [U.S. State of Texas Coal Combustion Residuals (CCR) Permit Program | US EPA](https://www.epa.gov/coalash/us-state-texas-coal-combustion-residuals-ccr-permit-program)

1. Public notice –
	1. Rule 62-701.804(13)(a) specifically requires applicants for a permit “to construct or substantially modify a CCR unit” to publish and provide proof of publication to the Department of a notice of application in a newspaper of general circulation in the area where the facility will be located. It appears that the only explicitly required public notice is for applications to “construct or substantially modify” a CCR unit. Although not cited in Rule 62-701.804(13)(a), Florida’s Narrative also cites Rule 62-110.106(6) for the proposition that additional publication of a notice of application “shall be required for those projects that, because of their size, potential effect on the environment or natural resources, controversial nature, or location, are reasonably expected by the Department to result in a heightened public concern or likelihood of request for administrative proceedings.” Thus, it is unclear when, other than a construction permit for a new unit or substantial modification, public notice of a permit application is triggered (i.e., other permitting actions, such as initial permits for an existing CCR unit, permit renewals, or other modifications).
	2. Rule 62-701.804(13)(a) appears to only require public notice of the application to be given 14 days after the application is submitted. Does Florida contemplate public comment on the application itself after publication? If so, how are comments submitted, reviewed, and responded to?
	3. Rule 62-701.804(13)(b)2. says that the public notice requirements for CCR permits issued by the Department are specified in Section 403.815, F.S., Section 403.707, F.S., Rule 62-110.106, and Rule 62-701.320, but it is unclear what portions of these rules pertain to public notice requirements and are applicable to CCR units. Additional detail is provided in the Narrative, along with a citation to F.S. 120.60. Based on the Narrative, it appears that notices of intent to issue are required to be public noticed for permits for construction or expansions of solid waste management facilities, as well as other projects “reasonably expected to result in a heighted public concern.” Clarification is needed as to when FDEP requires public notice, what type of public notice is being required, and where each requirement is specified in Florida’s regulations and/or statues.
	4. For the public notice that is specified (for applications and for notices of intent to issue), FDEP regulations appear to only require public notice in a newspaper
	5. There seem to be no references in the CCR rules or the cross-referenced rules to use of a mailing list for dissemination of information regarding permits. The Narrative references that FDEP maintains a spreadsheet of anyone that requests notice of agency action on an application. It is unclear how FDEP compiles this list of persons and how people can request to receive notice of such agency actions.

EPA suggestions:

1. Clarification is needed as to when public notice is required with respect to CCR unit permits. EPA recommends that Florida’s regulations provide public notice for initial permits for new and existing CCR units, as well as renewals, and other types of modifications as discussed below.
2. EPA recommends that FDEP evaluate the 14-day time period between notice of intent to issue and the permit becoming effective. This may not be enough time to receive, consider, and respond to public comments, as discussed below.
3. Consider requiring that public notice be posted on the FDEP website, as well as the applicant’s publicly accessible internet site. Digital notice is more likely to ensure that the public is aware of permitting decisions and may increase the public’s opportunity to review permit applications, supporting documents, and draft permits. Additionally, digital notice may increase the opportunity for public participation in the public comment process.
4. Consider creating a mailing list specific to CCR actions (both email and USPS) of interested persons or organizations and provide instructions in the regulation for how individuals can be added to the list.
5. Consider providing the opportunity for translation services for interested persons and/or translation of public notices.
6. Public Comment – EPA recommends public comment on CCR permit applications and notices of intent to issue draft permits. Neither the regulations nor the draft Narrative specifically address whether FDEP requests or considers public comments, or provides a specific time period to receive comments, or respond to comments.

EPA Suggestion:

1. EPA generally expects that an adequate CCR permit program will require the agency to: 1) request public comment as part of public notice; 2) provide for a mandatory comment period of no less than 30 days, with the option to extend the comment period as needed; 3) consider and respond to public comments; and 4) make the agency’s final decision on a permit and responses to comment available to the public.
2. Public Hearing - It is unclear within the rules whether any type of public hearing or public meeting process will be used in conjunction with CCR permits. There is a brief reference to a hearing within F.S. 403.815 (“Within 14 days after publication of notice of proposed agency action, any person whose substantial interests are affected may request a hearing in accordance with ss. [**120.569**](https://m.flsenate.gov/Statutes/120.569) and [**120.57**](https://m.flsenate.gov/Statutes/120.57)”). However, this appears to only be an opportunity for a facility or person whose substantial interests are affected to administratively contest the agency action.

EPA Suggestion:

* 1. EPA recommends FDEP consider adding regulations that create a requirement or option for a public hearing if requested or if significant interest is received during the comment period.
1. Modifications – There are three modification types, minor, intermediate, and substantial, defined in Rule 62-701.805(13)(c)2.-4. It appears that FDEP only requires public participation for substantial modifications.

EPA Suggestion:

1. Public participation (including public notice, comment, and opportunity for hearing) should be required for all modifications that are not essentially administrative in nature or will lessen the environmental impacts of the original permit.