

# N.A.C. Title 132 CCR Rule Adoption & CCR State Permit Program Application to EPA

## CCR Permit Assistance & Outreach Meeting


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# Observations, Goals, & Suggested Ground Rules

- Utilities & consultants are experts in the room on 2015 CCR rule implementation; DWEE's goal is to support those ongoing efforts while fulfilling its environmental protection duties
  - DWEE will not initiate discussion of individual CCR units, facilities, or utilities, but utilities are free to do so if they choose
  - Today's meeting focus is **issue identification** for incremental resolution in 2026 for a smooth transition to the state program
  - Please interrupt us with questions; discussion is encouraged
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# 2008 Dam Failure – TVA Kingston Fossil Plant




# Federal CCR (condensed) timeline

- 2015 federal CCR rule – regulated active & new LFs, surface impoundments (SIs), and inactive SIs at active facilities
    - intended by EPA as “self-implementing” (enviro groups sue utilities)
  - 2016 – Water Infrastructure Improvements for the Nation Act
  - 2018 – *USWAG v. EPA* case – LSIs; unlined & clay-lined - close
  - 2020 – DRAFT federal CCR permit program rule; not finalized
  - 2024 – Legacy Surface Impoundments (LSI) & CCRMU rule
  - 2026 – LSI/CCRMU Amendments & deadline extensions
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# State CCR (condensed) timeline

- “Self-implementing” origins, litigation, and changes between administrations have complicated state program adoption
  - 2016 NDEQ letter – “you may reference CCR rule in permits”
  - 2016 WIIN Act & 2017 EPA state CCR program guidance
  - Regional (IA, KS, NE, MO) meetings w/ EPA since 2021
  - 7/1/2023 State Assistance Grant (STAG) to NDEE/DWEE
  - Submitted draft regulations & program application to EPA on 12/4/2024 & individual state meetings since early 2025
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# Why Adopt Federal CCR Rules as a State?

- DWEE has 30+ years of experience in regulating CCR and 50+ years of experience in regulating groundwater quality
  - Federal CCR rules are equally environmentally protective as the current state rules under Title 132, Ch. 4
  - Neb. CCR facilities are subject to 2 sets (1 federal under “self-implementing”; 1 state) of overlapping regulations
  - Federal Permit Program has not been finalized since Dec 2016 passage of WIIN Act – “permit shield” concept
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# Regulations on Agency Webpage

<https://dwee.nebraska.gov/>


- Menu
- “Resources and Services”
- “Laws & Regulations”
- Rules and Regulations
- “DWEE Draft and Proposed Rules and Regulations”



# Incorporation by Reference (IBR) & CFR dates

- Code of Federal Regulations (CFR) is published once annually, always on July 1st, 20xx
  - Individual final rules published in Federal Register at any time throughout the year, e.g. 91 Fed. Reg. 5806 (Feb. 10, 2026)
  - Title 132 CCR proposal uses July 1, 2025 IBR: 2015 CCR Base Program, Part A/B Demonstrations, 2024 LSI/CCRMU rule
  - CCRMU deadline extension in Ch. 4, 001.01A – different form
  - EQC hearing is **June 24, 2026** – no “prospective IBR” in NE
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# Chapter 1 – Definitions (CCR)

- “CCR” (015) and “CCR unit” (012) added from CFR; more definitions IBR’ed from 40 CFR 257.53 in Chapter 4, 001.01
  - “CCR” added to definition of “solid waste” (122), “s.w. disposal” (124), “s.w. disposal area” (125) and “s.w.m.f.” (127)
  - state FFCA program definitions removed/replaced
  - “landfill unit” (061), “lateral expansion” (062), “surface impoundment” (137), and “uppermost aquifer” (146) have separate definitions for CCR units in Title 132, Ch. 4, 001.01
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# T132, Ch. 4 sections and corresponding CFR sections

Title 132, Chapter 4, section number & heading	Corresponding CFR sections
<b><u>001.01</u> Scope, Applicability, and Definitions; “major modification” definition is unique to CCR</b>	40 CFR §§ 257.50 through 257.53
<b><u>002</u> Location Restrictions</b>	40 CFR §§ 257.60 through 257.64
<b><u>003</u> Design Criteria</b>	40 CFR §§ 257.70 through 257.74
<b><u>004</u> Operating Criteria</b>	40 CFR §§ 257.80 through 257.84
<b><u>005</u> Groundwater Monitoring and Corrective Action</b>	40 CFR §§ 257.90 through 257.98
<b><u>006</u> Closure and Post-Closure Care</b>	40 CFR §§ 257.100 through 257.104
<b><u>007</u> Recordkeeping, Notification, and Posting of Information to the Internet</b>	40 CFR §§ 257.105 through 257.107
<b><u>008</u> Appendices</b>	Appendix III to part 257—Constituents for Detection Monitoring  Appendix IV to part 257—Constituents for Assessment Monitoring


# Chs. 2, 7, 8 – CCR reporting, GW monitoring, Corrective Action & financial assurance req'ts

- Chapter 2, 007.03-007.05 – add'l record-keeping for CCR facilities
  - Chapter 7, 001.01 – CCR units have separate g.w. monitoring and corrective action (C.A.) req'ts in Ch. 4, 005
  - Chapter 8, 007 and 008 – financial assurance req'ts applicable to C.A. cost estimates and C.A. work
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# State & Federal CCR Program Differences

- Under CCR rule, G.W. monitoring & C.A. program is based on higher of SDWA MCLs or background; FFCA program allows for R.B.C.A. and alternate GWPS when justified
  - State CCR program maintains F.A. requirement of closure, post-closure, and corrective action – more later
  - State CCR program maintains CQAP req'ts; certain maps
  - State CCR program continues to allow P.G.s to sign various G.W. monitoring & C.A. reports & documents
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# CCR Permit Application & Administration (1 of 2)

- Title 132, Ch. 2, 007.08 – application is incorporated into the permit as its conditions
  - For Title 132 permits, applicants (initial, renewal, & major modification) demonstrate **in the application** that the facility’s design, operating, and environmental monitoring requirements will meet regulatory req’ts
  - The “permit” is simple, incorporates the application, a few general conditions, & , at times, special conditions
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# CCR Permit Application & Administration (2 of 2)

- EPA has had few questions or interest in the form of the CCR permit document that DWEE intends to use
  - Could change if federal CCR permit program is finalized
  - 2016 NDEQ letter + work already done by utilities & consultants + extensive content of application + IBR approach = a lot of work is already done (we expect)
  - Work remaining: 1) double-check application meets applicable CFR req'ts, 2) remove FFCA references
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# Timeline – Rulemaking & CCR Application

- now to May 21, 2026 – outreach & informal comment
  - May 22 to June 24, 2026 – formal comment period to EQC
  - June 24, 2026 – EQC public hearing & take public testimony
  - June 25, 2026 (if adopted) → review by other branches
  - Late summer (if approved) → Secretary of State + 5 days
  - T132 in effect → CCR application to EPA ≤ approve in 6 mos.
  - All FFCA permits reissued as CCR permits within 2 years
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# Timeline – Reapplication by Utilities for CCR

- Title 132, Ch. 4., 001.02A – negotiated w/ EPA to achieve: 1) no lapse in state permit coverage, 2) permit issuance in 2 yrs
  - If EQC adopts, the FFCA regs are gone, but the state does not have an EPA-approved CCR permit program yet –state could not enforce
- 001.02A1 – if current renewal term ends 1-2 years after state program approval (?), deadline to apply is 180 days earlier
- 001.02A2 – if current renewal ends outside of 1-2 years after state program renewal, we will work with you to set a date


# April 9 LSI/CCRMU Proposed Amendments

- Major overhaul of 2024 LSI/CCRMU rule; some of 2015 rule
  - Acknowledges variable risk profiles of CCRMU
  - Acknowledges the heterogeneity of CCRMU disposal practices, units, and infrastructure uses → complexity
  - Acknowledges that many CCRMU were closed under previous state oversight and approval
  - Closure by removal is complicated & costly
  - Designing G.W. monitoring network requires flexibility
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# April 9, 2026, LSI/CCRMU Amendments

- Proposed rescission of all CCRMU requirements
- Slope stability requirements – reopening of 2018 proposal
- Alternative G.W. monitoring point of compliance  $\leq$  500 ft.
- Site-specific GWPS for constituents w/out a federal MCL
- Alternative closure performance standards if reviewed and approved by a permit authority (need a good C.S.M. w/ contaminant fate & transport model, & plan to mitigate potential exposure pathways); taking comment on C.A.


# April 9, 2026, LSI/CCRMU Amendments

- Extend closure timeframes when CCR is extracted for beneficial use, no adverse effects on human health or environment, various conditions are met, and activity is under supervision of a permit authority
  - A permit authority may modify the length of the post-closure care period
  - Remove 4<sup>th</sup> beneficial use criterion – unencapsulated use on the land above 12,400 tons in non-roadway applications must meet health-based & raw material comparison req'ts
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# 2026 Amendments - CCRMU Alternatives

1. Submit FERs; defer regulation to the permitting authority
  2. Establishing G.W. Monitoring and Corrective Action Zones
  3. Exempt CCRMU meeting the definition of beneficial use
  4. Expand roadbed exemption to railbed & embankments
  5. Expand “substantially equivalent” closure deferral criteria to CCRMU as used in regulations applicable to LSIs
  6. Exempt “other active facilities” & certain CCRMU based on size, volume, placement
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# April 9, 2026 Amendments rule – What next?

- Proposed rule – don't know what will be or when it will be finalized → a dense proposal w/ many alternatives
  - Adds uncertainty, primarily re. CCRMU
  - For DWEE, we are asking EQC to adopt rules (CCRMU) for NE facilities, but these will not be the future rules – could be confusing for EQC & regulated public
  - Today's meeting is an opportunity to discuss three (3) possible state approaches to 2026 Amendments rule
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# Option 1: Keep Current Proposal As-Is

- Current is 2015 CCR Base Program + 2024 LSI/CCRMU rule + Feb. 2026 CCRMU deadline extension rule
  - (+) all are final rules, particularly 2015 Base Program rules
  - (+) if utilities have already made investments in CCRMU FERs and want to complete and submit
  - (+) G.W. monitoring not installed until 2/10/2031
  - (+) CCRMU in DWEE's state application; will have authority
  - (-) CCRMU & other req'ts will change & need to be adopted
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## Option 2: Not Adopt past July 1, 2024

- Would adopt 2015 CCR Base Program and subsequent amendments, stopping at LSI/CCRMU rule, effective 11/4/2024 and CCRMU deadline extension rule
  - (+) no present uncertainty around CCRMU in state regulations because DWEE would not implement it
  - (-) future uncertainty would remain around CCRMU
  - (-) if CCRMU is not rescinded, CCRMU requirements would be “self-implementing” until DWEE adopts rules
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## Option 3: Delay CCR Rule Adoption Entirely


- Would not adopt 2015 CCR Base Program or any LSI/CCRMU rules until 2026 Amendments finalized
  - (+) no uncertainty at the state level, but still at federal
  - (-) future uncertainty would remain around CCRMU
  - (-) DWEE could lose momentum on the larger process
  - (-) If federal permit program finalized, DWEE could be determined to be a “non-participating state”
  - (-) Utilities have dual regulations + “self implementing”
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# Thank you, Questions & Comments

- 2nd webinar on Monday, May 4<sup>th</sup> at 2:00 p.m. – invites to follow; more general than today’s meeting
  - Send comments for Title 132 prior to May 22 to [dwee.waste@nebraska.gov](mailto:dwee.waste@nebraska.gov) – “informal” comments
  - After May 22, send comments for titles 126 and 132 to [dwee.eqc@nebraska.gov](mailto:dwee.eqc@nebraska.gov) – “formal” comments
  - Brian McMullen, DWEE Attorney
  - 402-471-0276; [brian.mcmullen@nebraska.gov](mailto:brian.mcmullen@nebraska.gov)
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# “Risk-based groundwater remediation”

- It's reduced, but not eliminated. Semantics are key.
  - See § 257.97(c) & (d) - Selection of remedy
  - Avoid Title 118 terms in C.A. documents (Class GA, GB, GC; RAC-1,2,3) and references to Title 118
  - Reasonableness of proposed & selected remedies is key
  - “Are we there yet? What does compliance with the CCR rule really mean?” Christine M. Harris, HDR
  - Closure in place vs. by removal – “elects” used in CFR
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“Timing of state CCR permit program approval/implementation. Impact on permit renewals and process. Groundwater monitoring (state vs. CCR rule). Legacy CCR”

- Did we answer it this morning?
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“What in current permits applications/renewals that is current state only requirement? And can it be removed?”

- Suggested a process this morning
  - Permittees will be responsible for identifying and removing current state-only requirements; DWEE can provide compliance assistance on specific questions
  - If EQC adopts rules, may be a good time to start removing
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“How DWEE will handle existing, self-implementing CCR Rule during the interim between state program submission and final EPA approval?”

- See Ch. 4, 001.02A re. continuation of state FFCA permit
  - “self-implementing” aspect of CCR rule will be handled **no differently** than past 10.5 years because DWEE does not have legal authority to implement a state CCR permit program until its application is approved by EPA
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“How Legacy CCR is incorporated? What does that mean for groundwater monitoring and reporting frequency?”

- 1<sup>st</sup> Question: discussed this morning – 3 options
- 2<sup>nd</sup> Question: G.W. monitoring and reporting frequency is pursuant to federal CCR requirements adopted by reference from 40 CFR 257 subpart D (it depends, default is semiannual monitoring; annual reporting)

# “Why the change, and will there be any additional requirements?”

- Why? Covered this morning (2x regulations, permit shield, Nebraska could be “non-participating state”, 30+ years of working together, initial outreach with utilities)
  - General policy & intent is to maintain consistency with the federal program in all areas
  - Any differences (FA, CQAP, application maps, etc.) are in the current proposal
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“Once the NE DWEE is approved to operate ‘in lieu of’ the federal rule, what is the process for transitioning existing, self-implementing facilities? Any changes to CCR Rule. Talk more about ground water monitoring.”

- Did we answer it this morning?
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# “Will we have new requirements/format/forms and timelines for reporting and monitoring results to the NE DWEE?”

- Not at present – keep doing what you’ve been doing under “self-implementing” rule & ask us if unclear
  - Major concern is that all required information is included
  - Future federal rule changes and possibly the federal permit program rule could mandate the use of certain documents
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