



November 19, 2010

U. S. Environmental Protection Agency
EPA Docket Center
Attention Docket ID No. EPA- HQ- RCRA-2009-0640
Mailcode: 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities; Proposed Rule; 75 Fed. Reg. 35128 (June 21, 2010)

Dear Docket Coordinator:

The following comments are provided on behalf of South Carolina Chamber of Commerce Environmental Technical Committee (ETC) regarding the proposed rule for disposal of coal combustion residuals (CCR) from electric utilities. The South Carolina Chamber of Commerce, with over 2000 members, represents a very diverse group of businesses with interests in South Carolina. Either as producers or users of electricity, all Chamber member companies are directly impacted by the proposed rule. The comments provided below do not preclude member companies from submitting comments directly or through other associations with which they are affiliated.

The ETC is providing general comments, based on various member concerns with the proposed rule. Specific technical comments are being submitted by member companies and other trade and industry groups and are not addressed in detail in these comments.

In summary, the ETC supports the Subtitle D option described in the proposed rule. Specific comments on each proposed regulatory option follow.

Subtitle C Option

The ETC is opposed to regulation of CCR under the proposed Subtitle C option. Reasons include the stigma of a hazardous waste determination, compliance costs, hazardous waste facility siting criteria, hazardous waste generator requirements, and the basis for considering CCR as hazardous waste.

Several Chamber electrical utilities members have already received feedback from their current CCR customers that those customers will no longer

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purchase CCR for beneficial use if any CCR is listed as a hazardous waste. We believe that the CCR beneficial use amounts will drop at least as much as EPA estimated (stigma reduction). Therefore, the benefit to cost ratio will decrease from the EPA estimates.

Hazardous waste treatment, storage, and disposal facility (TSDF) siting criteria preclude the future siting of CCR disposal facilities in proximity to the electrical generating plants in South Carolina, and, if not grandfathered, would shut down most, if not all, existing CCR impoundments, regardless of current or future regulatory standards for the impoundment designs.

There is insufficient Subtitle C capacity to handle the disposal of the volume of CCR currently placed in impoundments. Siting and construction of new Subtitle C facilities will be difficult and expensive, and will take years. Just the potential increase in RCRA hazardous waste treatment, storage, and disposal facility permit applications will stretch already thin resources in states' environmental departments and contribute to delays in building the necessary Subtitle C landfill capacity. Even under ideal conditions, we do not believe that the Subtitle C landfill permitting and construction process could be completed within the effective dates of the proposed rule.

There is potential for a CCR beneficial use material to be considered hazardous waste at some point simply due to market conditions or temporary decline in customer needs. Conservatively, utilities and CCR end users may be forced to make provisions for managing CCR as a hazardous waste, regardless of the beneficial use opportunities. Otherwise, if a beneficial use was temporarily or permanently suspended, either at the source or at the end use, some or all of the in process materials would become hazardous waste subject to the hazardous waste management regulations, such as secondary containment of storage areas. It is difficult or impossible to manage around a 'retroactive' point of generation if/when some CCR managed for beneficial use reverts to a special waste.

Many current CCR materials do not meet the criteria for listing as a hazardous waste. Therefore, we believe there will be numerous individual challenges to the proposed Subtitle C special waste determination, further resulting in use of both the regulated community and regulatory department resources. Furthermore, fly ash, bottom ash, boiler slag, and FGD do not exhibit the same chemical characteristics, and should not be treated as homogeneous group.

Subtitle D Option

The ETC strongly supports federal regulation of CCR under the Subtitle D option. Comments below address existing Subtitle D landfill capacity, alternate liner standards, and several questions concerning EPA's proposed

rule. These comments are also applicable to the Subtitle D Prime option, and are not repeated in our Subtitle D Prime option comments.

If existing impoundments cannot be retrofitted to Subtitle D standards, or if siting criteria preclude construction of Subtitle D landfills at electrical facility locations, disposal of CCR may be forced to municipal or commercial facilities with potential for commingling with municipal or other industrial waste, increasing the potential for leaching of constituents from the CCR.

The proposed Subtitle D option appears to apply to all coal ash facilities. Does EPA intend to include non-power sector coal ash facilities in the proposed Subtitle D option?

Why is beneficial use not mentioned in the discussion of the Subtitle D option? Beneficial use is currently taking place under the existing rules and regulations, and should not encounter any stigma issues.

For both the Subtitle C and Subtitle D options, provisions for alternative liner designs should be included. Either in situ or by means of additives, the leachability of CCR in a monofill setting may be significantly lower than in commingled landfill cells, allowing for suitable environmental protection with alternate liners.

Subtitle D Prime Program Option

We agree with and support the option of Subtitle D Program option along with allowing continued use of existing impoundments through their service life.

Subtitle C for Wet-Handled CCR; Subtitle D for Dry-Handled CCR

As some utilities are already switching from wet to dry handling of CCR, we are uncertain of the merits of this option. If the chemical composition is similar between the wet and dry material and the concern is physical mobility of the CCR due to impoundment failure, then the physical impoundment standards for wet CCR should be addressed instead of this proposed special waste determination for wet CCR.

State Subtitle D Program Option

The failure of a state to develop or have EPA approve enforceable Subtitle D regulations should not result in managing CCR under Subtitle C regulations as a special waste. Instead, where EPA determines a state's program is insufficient, EPA should take the lead on Subtitle D enforcement in that state. Otherwise, CCR with similar chemical characteristics will be managed differently from state to state solely on the basis of an administrative issue.

Cement Kiln Dust Approach Option

Similar to the concerns with the State Subtitle D Program option, there should not be a special waste determination solely on an administrative issue. Instead, there should be enforcement of the Subtitle D regulations.

General Comments

In addition to comments on the proposed options, the ETC also has some general comments on the management of CCRs. We are also responding to EPA's request for comments on specific topics.

The ETC supports a legislative change to allow EPA to step in where states do not have a solid waste program, or have an insufficient program, similar to the authority already exercised by EPA with the hazardous waste (RCRA), air emissions (CWA), and discharges to water (CWA) programs.

We also note a specific unintended consequence where some non-CCR materials are commingled with CCR materials in current electrical utility surface impoundments. If CCR are managed under Subtitle C, the non-CCR materials will likely be segregated for disposal. The segregation of CCR and non-CCR materials for disposal will lead to additional surface impoundments and/or other disposal practices, increasing overall disposal costs.

Free liquids are defined elsewhere in RCRA regulations, demonstrated by the paint filter test. The proposed rule is offering another definition for solids versus liquids. Is it EPA's intent to redefine free liquids for waste determinations and management?

A statutory CERCLA Reportable Quantity (RQ) of one pound is not appropriate for CCR, particularly with the volume of constituent data collected for CCR. An RQ based on the lowest constituent is more appropriate.

We also have general concerns over compliance deadlines with the proposed options, based on the uncertainty of Subtitle C or Subtitle D landfill capacity or siting and permitting of new or expanded facilities.

Management of CCRs

As previously discussed, the chemical characteristics vary among fly ash, bottom ash, boiler slag, and FGD. If a special waste determination is considered, these materials should be evaluated independently.

Liners

As previously discussed, provisions for alternative liner designs should be included. The management of CCR as a monofill will allow for greater certainty of predicting the mobility of constituents and the appropriate steps to maintain mobility below levels of environmental concern.

Beneficial Use

Beneficial use could be enhanced by more consistent beneficial use determinations based on compositional or leaching data and proposed end use. This should provide for greater confidence in the appropriateness of the beneficial use and the potential liability for the CCR end user.

Testing of the CCR and/or end product should be done in a manner most closely representing the end use. For example, the SPLP is more appropriate than the TCLP in certain end uses.

Stigma

As previously discussed, the stigma of a special waste listing will significantly reduce the beneficial use of CCR.

Damage Cases

The cost basis for one of the cited incidents is being challenged by a member company in separate comments.

Thank you for the opportunity to provide comments on this significant action. If you have any questions, please contact me at (864) 934-1243.

Sincerely,



David M. Comen, CHMM
Solid Waste Subcommittee Chair

cc: Jack Preston, SCANA
Darrell Scott, SC Chamber of Commerce