

EPA's Proposed Rules for Coal Combustion Residuals

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Air & Waste Management Association • Southern Section
Annual Meeting & Technical Conference • Mobile, Alabama

August 6, 2010





Please note:

This presentation assumes familiarity with EPA's proposed regulations.

—75 Fed. Reg. 35,128 (June 21, 2010).

With that, let's jump straight into issues and questions.



Presentation Overview

- This presentation will look at the following groups of issues:
 - General Siting Issues
 - Subtitle C Issues
 - Beneficial Uses
 - Odds & Ends



General Siting Issues

- For existing facilities, standards to approve retrofits
 - The proposed rule suggests...
 - EPA strongly prefers dry to wet and will phase out wet storage (ponds)
 - EPA wants retrofitting across the board, i.e., without regard to site-specific conditions or potential problems



General Siting Issues

- Time and expense necessary to install new facilities
 - Physical possibility: Construction time and cost, when in competition for scarce resources with other utilities
 - Groundwater modeling: Time to establish background levels, which is needed to establish whether any exceedance is caused by the facility



General Siting Issues

- Demonstration of engineering solution to siting issues
 - Wetlands
 - Seismic issues
 - Floodplain and other hydrological issues



General Siting Issues

- More monitoring issues:
 - How to interpret groundwater monitoring results in the absence of background data developed over time
 - How to identify appropriate monitoring parameters



Subtitle C Issues

- Legal / technical basis for listing
 - Properties of CCRs (leach test results)
 - Different properties of different CCRs
 - EPA's past determinations
 - Lawfulness of using concern for lack of direct enforcement under Subtitle D as basis to list under Subtitle C



Subtitle C Issues

- Point of generation
- Operational issues, such as:
 - Worker contact & training
 - Contact with water
 - De minimis & other releases
 - Facility-wide corrective action, reporting requirements, etc.
- Closure / post-closure / financial assurance requirements

Subtitle C Issues

- Administrative issues
 - E.g., EPA & state capacity to process the volume of manifests
- Hazardous waste disposal capacity
 - Current HW disposals: 2,500,000 tpy
 - Current CCR production: 130,000,000 tpy



Subtitle C Issues

- Given staggering incremental cost of Subtitle C regulation:
 - What is the evidence of commensurate or even measurable incremental health and environmental benefit associated with Subtitle C regulation compared to other regulatory options?



Beneficial Uses

■ Stigma

- Will utilities sell it?
- Will anyone buy it?
- Industry thinks not, but “EPA questions this assertion” (p. 35,185)
 - How to assess this question?
 - What kind of evidence?



Beneficial Uses

- Similar to the “point of generation” question – when can you say a CCR is for reuse or disposal?
 - So, this pile is hazardous because it’s destined for disposal, and that pile is not because a concrete manufacturer might buy it?
 - What if a new market develops? Can you “unring the bell” and excavate for a beneficial use sale?



Beneficial Uses

- “Encapsulated” uses
 - What does that mean?
 - For example: Does it include road building?
 - No amount of evidence is sufficient to support any other use?



Odds & Ends

- Performance-based methods and site-specific evaluation versus top-down, EPA-dictated, centralized requirements
- EPA's apparent assumption that state oversight = significant noncompliance



Odds & Ends

- Expert qualifications for inspections, certifications, and other evaluations
 - Not all P.E.'s have appropriate subject matter expertise
- Expert independence
 - In some circumstances, licensure may be more meaningful than corporate independence
 - Employees of corporate affiliates?



Odds & Ends

- Information management and confidentiality
 - Transparency vs. security, especially for impoundment stability issues
 - FERC restricts much of its dam-related information as “critical energy infrastructure information” (CEII).
 - Has EPA consulted with FERC or reviewed FERC’s CEII procedures?



Questions?

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