



March 16, 2015

TO: Members, Subcommittee on Environment and the Economy

FROM: Committee Majority Staff

RE: Hearing entitled “H.R. ____, Improving Coal Combustion Residuals Regulation Act of 2015”

I. INTRODUCTION

On Wednesday, March 18, 2015, at 10:15 a.m. in 2322 Rayburn House Office Building, the Subcommittee on Environment and the Economy will hold a hearing entitled H.R. ____, Improving Coal Combustion Residuals Regulation Act of 2015.” The Subcommittee will reconvene on Tuesday, March 24, 2015, at 2:00 p.m. in 2123 Rayburn.

II. WITNESSES

Day 1

- **David Paylor**, Director, Virginia Department of Environmental Quality, *on behalf of the Environmental Council of States*;
- **Michael Forbeck**, Environmental Program Manager, Pennsylvania Department of Environmental, Bureau of Waste Management, *on behalf of the Association of State and Territorial Solid Waste Management Officials*;
- **James Roewer**, Executive Director, Utilities Solid Waste Activities Group, *on behalf of USWAG, Edison Electric Institute (EEI), and American Public Power Association*.
- **Lisa Evans**, Senior Administrative Counsel, EarthJustice

Day 2

- **Mathy Stanislaus**, Assistant Administrator for Office of Solid Waste and Emergency Response U.S. Environmental Protection Agency.

III. BACKGROUND

A. Coal Combustion Residuals

Environmental Protection Agency (EPA) defines fossil fuel combustion wastes as “the wastes produced from the burning of fossil fuels (i.e., coal, oil, natural gas).”¹ One subset of fossil fuel combustion wastes is coal combustion wastes generated at electricity production facilities, also known as coal combustion residuals (CCR) or coal ash.² CCR has been defined by EPA as “byproducts of burning coal for electricity” and consists of inorganic residues that remain after pulverized coal is burned.

Fossil fuel combustion wastes are categorized by EPA as “special waste,” but Congress, in the Solid Waste Disposal Act Amendments of 1980 (Public Law 96-482), enacted provisions – known as the Bevill Amendment – that prevented EPA from imposing hazardous waste regulatory requirements for fossil fuel combustion wastes until EPA studied the issue and submitted a report to Congress regarding whether regulation of such waste under Subtitle C was warranted.

To date, EPA has completed two regulatory determinations, one in 1993 and the other in 2000. In both regulatory determinations, EPA considered the requisite factors and determined that regulation of fossil fuel combustion wastes and CCR, specifically, was not warranted under Subtitle C.

B. Current Status: Regulation of Coal Combustion Residuals

EPA released a pre-publication version of the final rule regulating coal ash on December 19, 2014 (Final Rule).³ The Final Rule regulates coal ash under Subtitle D of the Resource Conservation and Recovery Act (RCRA) and will become effective six months from the date of its publication in the Federal Register. While EPA selected the Subtitle D regulatory option for coal ash, the Agency makes clear in the preamble to the rule that it is still in the process of evaluating whether to reverse its Bevill regulatory determination and regulate coal ash under Subtitle C of RCRA.

As with the Proposed Rule, the Final Rule is self-implementing, meaning that it does not require issuance of permits. Rather, owners and operators of facilities regulated by the Final Rule must comply with the requirements without the interaction of a regulatory authority by certifying compliance with the requirements. EPA notes in the preamble to the Final Rule that if a State revises its Solid Waste Management Plan to incorporate the Federal requirements, facilities in compliance with an EPA-approved State solid waste management plan for coal ash that is identical to or more stringent than the Final Rule should be viewed as meeting or exceeding the Federal criteria. However, there is no mechanism to legally incorporate the Federal requirements into State programs. Therefore, even if a State adopts the Final Rule and

¹ See <http://www.epa.gov/wastes/nonhaz/industrial/special/fossil/>

² See <http://www.epa.gov/wastes/nonhaz/industrial/special/fossil/coalashletter.htm>

³ <http://www2.epa.gov/coalash/pre-publication-version-coal-combustion-residuals-final-rule>

incorporates the criteria into the State's solid waste management program, the Final Rule remains in place as an independent set of requirements that must be met. Also, the rule is promulgated under Subtitle D. As such it does not require regulated facilities to obtain permits, does not require the States to adopt and implement the new rules, and cannot be enforced by EPA. The rule's only compliance mechanism is for a State or citizen group to bring a RCRA citizen suit in Federal district court under section 7002 of that statute against a facility that is alleged to be in noncompliance with the new requirements.

IV. DISCUSSION DRAFT SUMMARY

The Discussion Draft utilizes the framework from H.R. 2218, which passed the House in the 113th Congress with broad bipartisan support. The Discussion Draft establishes State permit programs for coal ash and it incorporates as the minimum Federal requirements, the technical standards and requirements that EPA developed in the Final Rule as being protective of human health and the environment.

A. Every State Will Have a Permit Program

The Discussion Draft establishes a new approach to environmental regulation by amending the Solid Waste Disposal Act to authorize States to adopt and implement coal combustion residuals permit programs that include the minimum requirements set out in the legislation. The Discussion Draft allows States to choose whether to implement a coal combustion residuals permit program. If a State is currently authorized to implement a permit program under section 3006 or section 4005 of RCRA, the State will be authorized to immediately implement a coal ash permit program. If a State opts not to implement a permit program, then EPA will implement a program for that State.

B. Every Permit Program Will Contain the Minimum Requirements

The Discussion Draft requires that every coal ash permit program include all of the minimum requirements laid out in the legislation. States may choose to make their permit programs more protective than the minimum Federal requirements. EPA will have the ability to review State permit programs at any time to ensure that the permit programs meet the minimum statutory requirements.

C. The Minimum Requirements for Every Permit Program Will be based on EPA's Requirements in the Final Rule

The legislation in previous Congresses used the Municipal Solid Waste regulations under the Solid Waste Disposal Act as the basis for the minimum requirements for a coal ash permit program. The Discussion Draft takes into account that the technical requirements set forth by EPA in the Final Rule are protective of human health and the environment and should be the standard for regulating coal ash. The Discussion Draft incorporates the requirements in the Final Rule and uses them as the baseline for what must be included in every coal ash permit program.

Many of the requirements of the Final Rule are incorporated directly. For example, the design requirements (257.70 and 257.72), post-closure care requirements (257.104), air criteria (257.80), record keeping requirements (257.105), requirements for run-on/run-off controls (257.81), requirements regarding hydrologic and hydraulic capacity requirements (257.82), and requirements for inspections (257.83 and 257.84). The Discussion Draft also requires that criteria regarding surface water protection and financial assurance be included in coal ash permit programs, and requires financial assurance for maintaining final cover on closed inactive impoundments.

EPA acknowledged in the preamble to the Final Rule that it removed certain flexibility afforded other Subtitle D permit programs regarding groundwater monitoring and corrective action because the final coal ash rule was self-implementing. The Discussion Draft authorizes States to incorporate this flexibility into a permit program. The flexibility in the Discussion Draft is limited to the flexibility that States would have under the Municipal Solid Waste regulations in 40 CFR Part 258.

D. Every Permit Program will Address Inactive Surface Impoundments

The Discussion Draft addresses inactive surface impoundments (those that no longer receive coal ash as of the date of enactment, but still contain coal combustion residuals and liquids) in the same manner as the Final Rule. Within two months of the date of enactment, the owner or operator of every inactive surface impoundment must notify EPA and the State in which it is located regarding whether it intends to close or be regulated as a structure. If an inactive impoundment fails to close within three years from date of enactment, it becomes a structure and will be subject to all of the same requirements as any other regulated structure. The Discussion Draft provides for the possibility of a short extension for the closure deadline if it can be demonstrated, based on factors EPA set out in the Final Rule, that closure cannot be safely completed in three years and if there is no immediate threat of release.

E. Compliance Timeframes are Comparable to the Final Rule

Not more than three years after the date of enactment, key provisions of the Final Rule will be imposed on all owners and operators of structures and inactive surface impoundments that did not close – including, groundwater monitoring requirements, air criteria, surface water and record keeping requirements, run-on and run-off controls, hydrologic and hydraulic capacity requirements, and structural integrity requirements. These provisions will be imposed even in the absence of a permit.

F. Discussion Draft does not Impact the Ability to bring Citizen Suits

The legislation does not alter the ability to bring citizen suits under the Solid Waste Disposal Act. Rather, it will alleviate citizen suits as being the only mechanism for enforcement of the requirements and will prevent technical compliance decisions from being made by the courts.

G. States Must Provide the Public Access to Information

The Discussion Draft requires that every State, as part of its permit program, make information available to the public regarding groundwater monitoring data, emergency action plans, fugitive dust control plans, notifications regarding closure (including certifications of closure by a qualified professional engineer), and corrective action remedies.

V. ISSUES

The purpose of the hearing is to:

- Analyze the Discussion Draft and how it would be implemented by the States and EPA;
- Hear from EPA, the States, and stakeholders about whether the legislation accomplishes the policy objectives of the Final Rule, while alleviating the issues associated with implementation of the Final Rule; and
- Hear from witnesses regarding issues with the Discussion Draft that could be improved.

VI. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Tina Richards of the Committee staff at (202) 225-2927.

