

## Utility Solid Waste Activities Group

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# USWAG

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Editors & Reporters:

Attached are comments of the Utility Solid Waste Activities Group (USWAG) on EPA's Notice of Data Availability ("NODA") on the Disposal of Coal Combustion Wastes (CCW) in Landfills and Surface Impoundments.

USWAG is a consortium of approximately 80 utility operating companies, the Edison Electric Institute, the National Rural Electric Cooperative Association, and the American Public Power Association. Formed in 1978, USWAG is responsible for addressing solid and hazardous waste issues on behalf of the utility industry.

EPA published the NODA to update the public record on CCW disposal and to assess whether concerns that led it to contemplate regulation of these materials under subtitle D of the Resource Conservation and Recovery Act (RCRA), rather than as hazardous wastes under RCRA Subtitle C, had been appropriately addressed. This record is clear:

- A 2005 study by the U.S. Environmental Protection Agency (EPA) and the Department of Energy (DOE) of newly constructed CCW landfills and surface impoundments confirmed that positive waste management trends noted by EPA in 2000 have continued and, in several key respects, have significantly accelerated. EPA concluded in its May 2000 decision that these materials need not be managed as "hazardous" waste. For example, EPA found that nearly all new CCW disposal units had installed liners, and nearly all new landfills were monitoring groundwater, thereby addressing groundwater protection concerns.
- The DOE/EPA report also addressed trends in state regulation, and found that state regulatory controls have increased and that deviations from state regulatory requirements were being granted only on the basis of sound technical criteria. EPA and DOE found state regulations generally were administered in a responsible manner and were improving. In fact, since 2005, several states have announced proposals for enhancing their state programs. The gaps in state programs that were of concern to EPA in 2000 are sharply narrowing.
- Major change is also occurring at existing facilities. The USWAG Coal Combustion Product (CCP) Action Plan, developed in consultation with EPA and state regulators, addresses specific concerns EPA identified in 2000. The plan focuses on establishing groundwater protection standards and monitoring, corrective action, prohibiting CCW disposal in unengineered sand and gravel pits, and considering dry handling technology when new disposal capacity for fly ash is needed. Facilities representing over 75% of our utility members' coal-fired generation have either agreed to implement the plan or are managing their CCWs consistent with the plan on their own and will keep USWAG apprised of their progress. Implementation of the plan will continue to strengthen CCW environmental management on a faster timetable than would occur through a formal rulemaking process.

- In sharp contrast to these prudent and effective management practices, the counter-proposal offered by Earthjustice is a radical departure from EPA's approach to RCRA Subtitle D regulation. It would federalize the regulation of CCW disposal (including some beneficial use applications that EPA had determined did not warrant federal regulation) and essentially would preempt the states as the primary regulators of CCWs. The Earthjustice proposal in effect resembles a RCRA Subtitle C hazardous waste regulation, reaching far beyond the concerns identified by EPA in 2000 and gutting the agency's regulatory determination.
- Simply put, the Earthjustice proposal is unsupported by the substantial body of data collected by EPA. Its scope is far beyond anything authorized by RCRA Subtitle D, and its restrictions on the beneficial use of CCPs would ensure the failure of the combined efforts of governmental agencies (e.g., EPA and DOE) and industry to meet EPA's Strategic Plan goal of 50% CCP utilization by 2011. According to the Strategic Plan, 50 percent of coal combustion products would be recycled or beneficially used in a variety of ways, including use in cement and concrete products; road base and subbase, embankments, and structural fills; wallboard manufacture; and as agricultural soil growth-enhancement additives.
- EPA's Damage Case Assessment reaffirms what EPA recognized in 2000 – that nearly all the proven cases of environmental impacts resulting from coal ash disposal involve older, unlined sites where disposal occurred before 1993. Nearly all of the 16 sites at which EPA identified groundwater impacts have completed or are undergoing corrective action. The increasingly diligent management at new and existing facilities dramatically reduces the possibility that concerns associated with much older facilities could reoccur.
- EPA's risk assessment on potential exposures to human health and the environment from the disposal of CCWs differs significantly from EPA's voluminous field data and real-world observations. EPA does not attempt to validate its modeling or assumptions using actual field data from groundwater monitoring and uses outdated or disproved information in its analysis. The risk assessment also includes overly conservative assumptions in its modeling that drastically overestimate exposure risks and fail to consider important geochemical processes that limit the impacts from chemical constituents of coal ash. Given the availability of abundant data on potential risks associated with CCW disposal and the seriously flawed methodology used in the risk assessment, the assessment is an unreliable tool for developing future regulatory policy for CCW disposal.

The additional material added to the record by this NODA demonstrates that the concerns EPA expressed in its 2000 regulatory determination have been largely addressed through improved management practices and more robust state regulatory programs. Today's utility industry management of CCWs is quite different from the practices prevailing in 1994 on which the 2000 determination was based. To the extent that isolated problems arise, the states are fully equipped to address those issues, and, of course, EPA retains enforcement authority over solid waste disposal.

EPA should allow the states to remain the primary regulatory authority over CCW disposal. Industry's strong track record flies in the face of Earthjustice's call for a new and cumbersome federal program. Such a program would be unnecessary and, equally important, disruptive to state regulatory regimes which have matured considerably over the past dozen years in their oversight of CCW disposal.