

**Utility Solid Waste Activities Group**

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**U S W A G**

**STATEMENT OF JIM ROEWER, EXECUTIVE DIRECTOR  
UTILITY SOLID WASTE ACTIVITIES GROUP  
AT MEETING OF THE COMMITTEE ON MINE PLACEMENT  
OF COAL COMBUSTION WASTES**

**NATIONAL RESEARCH COUNCIL  
KECK BUILDING, 500 5<sup>TH</sup> STREET, N.W.  
WASHINGTON, D.C. 20001**

**October 27, 2004**

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**Introduction**

Good afternoon, my name is Jim Roewer, and I am the Executive Director of the Utility Solid Waste Activities Group, or USWAG. USWAG consists of approximately 80 utilities, energy companies and trade associations, and is responsible for addressing solid and hazardous waste issues on behalf of the utility industry. USWAG's mission is to support its members' production and delivery of energy in an environmentally sound and economic manner. I very much appreciate your invitation to participate in the Committee's first meeting.

First, let me thank the National Academies for responding to Congress' request for an impartial science-based study of the health, safety, and environmental risks and benefits associated with using coal ash (or, as we call them, coal combustion products or CCPs) for reclamation in active and abandoned coal mines. Although we firmly believe that the use of CCPs in mines is environmentally safe, and indeed, is environmentally beneficial, we recognize that a segment of the public is not convinced and is fearful that placing CCPs in mines will harm their communities. We hope that a careful review by this distinguished group of scholars and professionals, as well as any new study that you may undertake to supplement the existing data, will produce a report whose conclusions resolve any concerns or misconceptions held by concerned citizens, the public and any of the interested stakeholders.

At the outset, let me express my disappointment that some groups have already voiced complaints about this Committee's processes, even before its first meeting. They seem to be laying a foundation for accusing this panel of bias, implying that industry has stacked the deck in the selection of the panel members. Like one of the earlier speakers, none of the scholars we recommended was selected. Naturally, we were disappointed, but that does not make this an unbalanced or biased panel. You are all technical experts with a range of relevant experiences, and we are confident that you will apply your technical expertise fairly to the facts you find. Let me thank each of you for agreeing to serve on this Committee.

You will note that I used the phrase "coal combustion products" instead of "wastes" or "byproducts" in describing the material you will be studying. That is deliberate. Our industry has adopted a goal of eventually achieving 100% utilization of these residuals from the combustion of coal. Both the Environmental Protection Agency and the industry are committed to changing the mindset about these materials from that of a waste to one of a commercially valuable product. By using the term "product" instead of

“waste”, we are challenging the technical ingenuity in our industry, in academia, and in government to find new beneficial and environmentally protective uses for these materials instead of resting on the old habits of looking to landfills as the final resting place for coal ash. The phrase “coal combustion products” is now used by EPA in its Coal Combustion Partnership Program (“C<sup>2</sup>P<sup>2</sup>”) as part of an effort to increase the beneficial use of these materials, and it was also recently adopted by the American Society for Testing and Materials as the appropriate name in an ASTM consensus standard.<sup>1</sup>

We have made significant progress increasing the beneficial use of CCPs, but still have a long way to go to achieve 100% utilization. In 2002, slightly more than 35% of these materials were beneficially utilized. The rest, of course, were managed in disposal and storage units, but we expect the percentage of CCPs managed as waste to decline over time. Our goal is to increase the beneficial utilization of CCPs to 45% in 2008 and achieve 50% utilization by 2010. Whether we can achieve these ambitious goals will depend in part on the regulatory policies adopted by the Federal and state governments regarding CCP beneficial uses. We also recognize that these regulatory policies will certainly be influenced by technical studies of CCPs that may be undertaken, including the important work of this Committee.

### **Context of NRC Study**

The Statement of Task prepared by your staff has correctly identified the context in which your study will play an important role. The study and regulatory determination of Federal policy for CCPs stems from a law popularly called the Bevill Amendment, which was added to the Resource Conservation & Recovery Act (or “RCRA”) in 1980. This amendment was enacted at a time when the nation had great concern about foreign control of vital energy sources such as oil, and in response to this concern, Congress sought to ensure that domestic energy sources, such as our abundant supply of coal, were not subjected to inappropriate regulation that would discourage reliance on these plentiful domestic sources. To reinforce the incentives for coal combustion to generate electric power while simultaneously ensuring protection of human health and the environment, Congress suspended EPA’s authority to regulate CCPs as hazardous waste until (i) it completed a study of these materials, (ii) reported its findings and recommendations to Congress, and (iii) after public comment, issued a regulatory determination based on the study.<sup>2</sup> In other words, Congress told EPA to gather the facts about CCPs and to base its regulatory policy on real world conditions.

Four times, in the nearly 24 years of EPA’s study of CCPs, EPA came to the conclusion that these materials do not warrant hazardous waste regulation – first in 1988; second

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<sup>1</sup> ASTM E2201-02a.

<sup>2</sup> RCRA § 3001(b)(3)(A)(i), 42 U.S.C. § 6921(b)(3)(A)(i).

in 1993;<sup>3</sup> third in 1999; and finally in 2000.<sup>4</sup> However, in the portion of its May 2000 regulatory determination regarding placement of CCPs in mines, EPA concluded that further study was needed to make a determination whether the existing regulatory system under the Surface Mining Control & Reclamation Act (“SMCRA”) was adequate or whether it needed to be supplemented either by additional regulations under SMCRA or under RCRA.<sup>5</sup>

Those additional studies have been underway at EPA since the fall of 2000 and have allowed the Agency to collect substantial data from mine placement sites around the country and to coordinate its work with other federal and state environmental and mining regulatory agencies, with the public, and with interested stakeholders. We have learned a number of important facts as a result of that work:

- Despite extensive dialogue with and submissions by critics of mine placement of CCPs, EPA has failed to uncover a single case of *proven* environmental damage stemming from the beneficial use of CCPs at a mine site.<sup>6</sup> The standard that alleged cases of damage be proved is the standard prescribed by the Bevill Amendment.<sup>7</sup> The most important factor is the requirement that any finding of environmental damage be causally connected to the presence of CCPs. EPA itself has acknowledged the difficulty of determining whether groundwater impairment stems from mine placement activities or previous mining operations.<sup>8</sup> We have seen claims of damage submitted by critics of mine placement focusing on mine sites at which no CCPs were ever used for reclamation. Your study and recommendations should keep in mind the statutory criteria that govern EPA’s regulatory authority with respect to Bevill Amendment materials and the importance of making certain that any damage you may find is in fact attributable to CCPs and not to some other conditions at the site.

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<sup>3</sup> 58 Fed. Reg. 42466 (Aug. 9 1993).

<sup>4</sup> 65 Fed. Reg. 32214 (May 22, 2000).

<sup>5</sup> *Id.* at 32215, 32231.

<sup>6</sup> EPA acknowledged this fact in its 2000 regulatory determination and we understand that the absence of proven damage cases is true today. See *id.* at 32228 (“To date, we are unaware of any proven damage cases resulting from minefilling operations.”); *id.* at 32231 (“We have not as yet identified proven damage cases resulting from the use of coal combustion wastes for minefilling.”).

<sup>7</sup> See RCRA § 8002(n)(4), 42 U.S.C. § 6982(n)(4) (“documented cases in which danger to human health or the environment from surface runoff or leachate has been proved”).

<sup>8</sup> See 65 Fed. Reg. at 32231 (“It is often impossible to determine if existing groundwater quality has been impacted by previous mining operations or as a result of releases of hazardous constituents from the coal combustion wastes used in minefilling applications.”).

- We have also learned that the Federal government has not been alone in setting regulatory standards for placement of CCPs in mines. The states have been active players in prescribing stringent regulatory standards for CCP mine placement, usually under delegated authority from the Office of Surface Mining under SMCRA, but also under state solid waste programs, often modeled after the Federal RCRA program. The robust state programs have been thoroughly documented in the record of the EPA study.

EPA has not been alone in studying the health, safety, and environmental risks associated with using CCPs for reclamation in active and abandoned coal mines. Let us take a look at recent important work done by the Commonwealth of Pennsylvania. Three facts need first to be understood about mine placement in Pennsylvania:

1. CCPs have been used in large volumes at mine sites for many years. This state has probably more experience with the use of CCPs for mine reclamation than any other.
2. Mine placement in Pennsylvania is governed by strict regulations.
3. The Commonwealth of Pennsylvania recognizes that utilization of CCPs for mine reclamation is an important benefit in addressing the real environmental problems from abandoned mine lands and acid mine drainage that is contributing to the degradation of water resources in the Commonwealth.

Given the importance of mine reclamation to Pennsylvania, it is not surprising that the latest comprehensive scientific study of health and environmental risks of the practice has been sponsored both by the state government and by universities in Pennsylvania. Let me share with you two recent reports issued by different arms of the Pennsylvania government and used as a basis for setting mine placement policy.

This past February the General Assembly's Joint Legislative Air and Water Pollution Control and Conservation Committee investigated a demand by some of the community groups in Pennsylvania for a state-wide moratorium on the use of CCPs for mine reclamation. The 16 members of the bipartisan joint committee examined the pros and cons of CCP mine placement and unanimously expressed its strong support for continued use of CCPs for mine reclamation and other beneficial purposes. The key finding in the Joint Committee's report states:

The beneficial use of coal ash, including mine reclamation, has been well documented and the potential risks have been thoroughly examined and these results have been reported to local, state and federal agencies. The Committee has researched data from a dozen sites in Pennsylvania and found that coal ash can be effectively and safely used when properly managed. The information also demonstrates the significant economic

and environmental benefits coal ash plays in the reclamation activities in the Commonwealth.<sup>9</sup>

Shortly after the Joint Committee issued its report, Kathleen McGinty, Secretary of the Pennsylvania Department of Environmental Protection (a former Clinton Administration Chair of the White House Council on Environmental Quality), released a separate report on the Bark Camp Demonstration Project. Secretary McGinty's report concludes that coal ash and dredged material can be used successfully as fill to remove health and safety hazards associated with abandoned mines. Based on five years of monitoring data, the project demonstrated, among other things, significant reductions in acid mine drainage, the removal of physical hazards from past mining activities, and the restoration of natural vegetation and habitat. In short, the Bark Camp Demonstration Project Report confirms that placement of alkaline ash in mines with acid drainage is an effective control technique to stabilize sites and neutralize acidic discharges.<sup>10</sup>

### **Direction of Study**

Your work does not begin on a blank slate. Rather, you have the benefit of extensive fact gathering and critical analysis by professionals in both Federal and State government and by distinguished scholars at numerous academic institutions. We strongly recommend that you review the work already done to satisfy yourselves that it meets the standards of analytic excellence. After you have completed that review, we suggest that you make an assessment of any additional work that you believe is necessary to complete the tasks on your Plan of Action.

As you review the available data and conduct any additional study, we suggest you ask yourselves the simple question: Would post-mine conditions be worse if mine reclamation using CCPs were banned? In other words, the specific tasks you have identified lead you to one very important broad question: Whether the presence of CCPs at mine sites is the source of the problem or is part of the solution?

We are somewhat troubled by the list of points in the Statement of Tasks that the Committee will address because it seems to presume that CCWs (the term used in the Statement) are the problem requiring a host of regulatory actions rather than asking the question I just asked – Are adverse impacts near mine sites caused by the presence of CCPs or the result of post-mine conditions that would exist, possibly in more exacerbated form, in the absence of CCPs? We respectfully suggest that you cannot fairly answer most of the questions listed regarding the adequacy of various regulatory

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<sup>9</sup> Joint Committee Report, Executive Summary.

<sup>10</sup> See *also* 65 Fed. Reg. at 32231 (EPA “acknowledge[s] that when the complexities related to site-specific geology, hydrology, waste chemistry and interactions with the surrounding matrix, and other relevant factors are properly taken into account, coal combustion wastes used as minefill can provide significant benefits.”).

policies without first determining whether the conditions purportedly being addressed are caused by the presence of CCPs or would otherwise exist at those mine sites.

In conclusion, let me say that we believe the existing record strongly establishes that the use of CCPs at mines, subject to the regulatory controls already in place under SMCRA and comparable state law, benefits the environment. We look forward to your further study that we hope will demonstrate to all stakeholders the benefits of the practice. You will have our full cooperation in pursuing your study in whatever direction your work takes you and we welcome the opportunity to support your effort and information needs as appropriate.

Again, let me thank you for your service on this Committee and for your consideration of my statement.