



**STATEMENT OF WILLIAM R. WEISSMAN, PIPER RUDNICK LLP,
ON BEHALF OF THE UTILITY SOLID WASTE ACTIVITIES GROUP
AT EPA LISTENING SESSION ON COAL COMBUSTION PRODUCTS,
STATE COLLEGE, PENNSYLVANIA**

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March 23, 2004

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My name is William Weissman. I am a partner with the Washington, D.C. office of Piper Rudnick LLP and I am here today on behalf of the Utility Solid Waste Activities Group, commonly known as USWAG.

I would like to express my appreciation to EPA for taking the time to schedule these public listening sessions on coal combustion products. The purpose of my presentation tonight is to identify some "old myths" and to articulate some "new realities" for the benefit both of EPA and any citizen groups in attendance relating to the regulatory process currently underway with respect to coal combustion products. Many of these "myths" have been repeated by various groups for many years, but repetition does not make them true or accurate. It is time to dispel these "myths" and to express the true realities regarding coal combustion product management.

Myth No. 1. In the absence of enforceable Federal regulations, CCPs are not subject regulatory controls. Many advocates simply refuse to acknowledge the existence of enforceable state regulatory controls. This is one of the oldest false myths. The states, in general, have active regulatory programs to govern the disposal of coal ash. Pennsylvania's Residual Waste Rules are among the toughest and most effective state regulatory programs.

When Congress enacted RCRA in 1976, it made a clear distinction between Subtitle C (the program for hazardous wastes) and Subtitle D (the program for nonhazardous solid wastes). Some groups keep urging EPA to adopt "enforceable Federal regulations." That is code for hazardous waste regulations. But that option is not on the table. When EPA decided in the Bevill regulatory determination in May 2000 to develop nationwide RCRA regulations, they were talking about retaining the primary role of the states in regulating CCPs, and simply filling in gaps in state programs where EPA's Bevill study had identified areas of environmental concern. Any effort to supplant state regulatory control with a full scale Federal regulatory program will be opposed by the states, by industry, by the Congress, and most likely even by EPA itself.

Myth No. 2. Allegations that CCPs contain harmful levels of organic constituents and thallium are false. In a recent petition filed with EPA, some of the environmental lobby groups that have been the loudest in their criticisms of coal ash have also fallen short in verifying their facts. One example in the petition is their claim that the "wastes produced as a by-product of combustion" contain "detectable and dangerous levels" of numerous organic constituents such as PAHs, benzene, phenols, dioxins, and PCBs. Hoosier Environmental Council ("HEC") et al. Petition, p. 16. EPA has already addressed this issue several years ago and flatly rejected it. In its 1999 Report to Congress on Wastes from the Combustion of Fossil Fuels, the Agency reported on

studies on the presence of organics in coal combustion ash (including specifically PAHs and dioxins) and stated that “total and leachable organics are generally reported to be at or below analytical detection limits.” EPA Report to Congress, Vol. 2, p. 3-13 (March 1999).

Myth No. 3. Reduced mercury emissions will increase mercury levels in coal ash to unsafe levels. This mercury claim is a red herring. This is an issue undergoing careful scientific research, but even at this early stage of the research, the evidence indicates that even a substantial decrease in mercury emissions will not prevent utility compliance with environmentally sound disposal standards for coal ash.

Myth No. 4. The Environmental Benefits of CCP Mine Placement Are Unproven. In the face of overwhelming evidence of the environmental benefits of CCP placement in mines, we repeatedly hear claims that such benefits have never been proven. To these critics, we would like to point to a report issued last month by the Pennsylvania General Assembly’s Joint Legislative Air and Water Pollution Control and Conservation Committee (the “Joint Committee”). This Joint Committee investigating a demand by environmental groups for a state-wide moratorium on CCP mine placement carefully examined the pros and cons of CCP mine placement. The 16 bipartisan legislators who made up the Joint Committee unanimously rejected the proposed moratorium and expressed their 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.

See Joint Committee Report, Executive Summary. This bipartisan reports is just another confirmation of the evidence of the benefits of CCP mine placement.

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. Her 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. The well-documented success of the Bark Camp Demonstration Project directly rebuts any claim that environmental benefits of mine placement have not been proven.

Myth No. 5. “EPA has recognized 65 cases of damage where drinking water, groundwater or surface water has been contaminated with hazardous constituents from power plant waste.” HEC Petition, p. 16. This claim is patently false. Making an accusation about a site is a far cry from demonstrating that it is a proven damage case. If you read the words of the Bevill Amendment, you will find that the law requires EPA to focus its study of CCPs on “documented cases in which danger to human health or the environment from surface runoff or leachate has been *proved*.” RCRA § 8002(n)(4) (emphasis added). Moreover, EPA’s interpretation of what constitutes a proven damage case was itself subject to public comment in a formal rulemaking. EPA’s interpretation is now binding on all of us. See 65 Fed. Reg. 32214, 32224 (May 22, 2000). Under that interpretation, no more than 21 cases qualify as proven damage cases, and most of these 21 cases are sites that have been closed for years, others involve historic management practices that would not satisfy today’s regulatory standards, and at some, new information refutes the initial conclusion that they were proven damage cases.

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Again, I thank EPA for scheduling these listening sessions on CCP management. If the Agency’s staff has any questions, I would be pleased to answer them.