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Re: Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Enhancing Public Access to Information; Reconsideration of Beneficial Use Criteria and Piles

The American Coal Council (ACC) submits these comments in response to the Environmental Protection Agency's (EPA) Federal Register Notice of August 14, 2019 regarding its proposal to revise portions of its 2015 Coal Combustion Residuals Final Rule.

The ACC is a nonprofit trade association in its 37th year representing the collective business interests of the American coal industry. Our members include coal suppliers and energy traders, utilities and independent power providers, industrial consumers, transportation companies, terminals, and support services suppliers. Since our member companies touch every aspect of turning one of America's most abundant energy resources into reliable and affordable electricity for the United States economy, our Association has first-hand knowledge of the direct and indirect impacts of coal-related regulations and a unique, "boots on the ground" perspective. Coal is also integral to the steel-making process and the industrial production of cement, chemicals, and paper. Our diverse membership base encompasses the entire coal supply chain, and it is from this broad perspective that we assess the impacts of regulations impacting coal supply and use. While ACC provides these comments from that broad perspective, individual member companies of ACC may submit separate comments on their own behalf that offer additional or other views.

Introduction

Every part of the coal supply chain is stringently regulated at the federal, state, and local levels – coal mining; coal use at power plants and industrial facilities; transportation by rail, barge, and truck; and handling coal through docks and terminals. Additionally, companies supplying materials and equipment, and those providing services including analytical, environmental, technical and

engineering support are also either directly or indirectly impacted by the stringent regulatory environment.

Thus, regulatory decisions have widespread impacts. Regulatory uncertainty, changes to regulations, and inconsistencies in regulations affect businesses large and small. There are real consequences to people, their livelihoods, and their families.

Recently, in the economic analysis EPA conducted for another of its rulemakings, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 108(b) rulemaking for the electric power industry, EPA made a reference to 40 percent of U.S. coal power plant capacity being shut down or designated for closure since 2010. EPA's economic analysis in that rulemaking also stated that approximately 85 plants (or 18 percent of coal generation) open in 2014 have closed or converted to another fuel type.

Many of the coal plant closures and conversions are attributed to EPA regulations. According to the U.S. Energy Information Administration, coal plant closures reached a high in 2015 driven in part by EPA's Mercury and Air Toxics Standards (MATS) rule.[1] That regulation took effect in April 2015. The United States Supreme Court struck it down just a few months later, deeming it inappropriate for EPA to impose billions in economic costs for a few dollars of health or environmental benefits. Despite the high court ruling, it was too late for many coal plants. The power sector had been forced to choose between installing emissions controls or closing the affected coal units well before the Supreme Court's ruling due to the April 2015 compliance deadline. The MATS rule demonstrates the significant impacts of regulations and the ACC urges EPA to proceed with caution as it considers changes to CCR regulations in this rulemaking.

With this proposal, EPA appears to be expanding the scope of regulation rather than more pointedly addressing issues remanded by the court and other policy issues. ACC is concerned that EPA's proposal introduces significant new barriers to the beneficial use of CCRs, an environmental and sustainability success story.

We also point out that EPA has a long history of concluding that the beneficial use of CCR is exempt from federal regulation under the Resource Conservation and Recovery Act (RCRA), including in the 2015 CCR Final Rule.

Revision of the CCR Beneficial Use Definition and Treatment of CCR Piles

EPA's proposal would revise the CCR definition of beneficial use by replacing the mass-based numerical threshold with specific location-based criteria. It would also provide for a single approach for the treatment of CCR piles, regardless of where such a pile is located and whether it would be disposed of or would be beneficially used.

The ACC is concerned that what EPA has proposed may jeopardize the beneficial re-use of CCRs resulting in far lower volumes of CCRs recycled. This is not a desirable environmental outcome and

[1] U.S. Energy Information Administration, "Today in Energy", December 28, 2018.

stands in contrast to EPA's history of supporting beneficial use and what Congress set forth in RCRA which directs EPA's rulemaking authority.

EPA has specifically recognized that beneficial use has environmental, economic, and product benefits including reduced use of virgin resources, lower greenhouse gas emissions, reduced cost of CCR disposal, and improved strength and durability of materials.

EPA's proposal could undermine sustainability objectives and the many years of progress in recycling CCRs. The American Coal Ash Association has reported that the year 2017 broke a record for beneficial use, which reached 64 percent of the CCRs produced.[2] This is nearly 72 million tons of material that avoided disposal. This record also underscores the market demand for CCRs, which are used to make concrete, gypsum wallboard, blasting grit and roofing granules among other applications.

With regard to the mass-based numerical threshold of 12,400 tons previously established in EPA's definition of beneficial use criteria, EPA could simply correct the math error for the numerical threshold which was the result of a discrepancy between a number reported in cubic yards instead of cubic feet as EPA had requested. This correction would change the threshold volume from 12,400 to 74,800 tons. Though it is questionable whether a volumetric standard was warranted at all because of the lack of damage cases associate with beneficial use, this correction is preferable to yet another regulatory change that industry must contend with if EPA replaces the mass-based criteria with specific location-based criteria. Moreover, EPA does not offer any new damage cases or scientific analysis for such a change.

With regard to EPA's proposal of a single approach for the treatment of CCR piles regardless of the pile location and purpose, EPA would eliminate the distinction between the treatment of CCR piles onsite at a power plant and treatment offsite at a beneficial use facility. This would be replaced with a single method applicable to all temporary placement of CCR on the land, whether the CCR is onsite or offsite, and whether the CCR is subsequently destined for disposal or beneficial use. With this proposed approach, EPA may be trying to prevent excessive material being stored on a speculative basis for "presumed" beneficial use. But by eliminating this regulatory distinction, EPA's new approach introduces confusion about storage of CCRs. Storage is an essential and necessary component of the supply chain for beneficial use. This is no different than inventory needed in other industries for managing production and distribution processes and meeting customer needs. Buyers procuring CCR material for beneficial re-use applications must be assured of adequate and reliable supply.

The closure of so many coal power plants has already negatively impacted supply and is changing the CCR marketplace and logistics, which also has environmental consequences. The U.S. market is experiencing a trend of more domestic fly ash being shipped greater distances to reach customers.[3] The need for material and reduced overall volume has also resulted in buyers looking at alternatives including importing from other countries. Coal use for power generation continues to

[2] American Coal Ash Association, "Coal Ash Recycling Reaches Record 64 Percent Amid Shifting Production and Use Patterns", November 13, 2018.
[3] Danny Gray, Charah Solutions, Inc., "Coal Combustion Residuals – A Sustainability Success Story Impacted by Policy and Regulatory Market Drivers", American Coal magazine, Issue 2 2018, p. 57.

grow globally, and that correlates to increasing amounts of CCRs produced in countries outside of the U.S. Regulatory constraints or lack of landfill capacity in some countries have resulted in subsidized transportation of CCRs exported to the U.S.[4] The predominant use of imported CCRs in the U.S. has been in cement manufacturing.[5] Though imported volumes are currently small, in areas of the U.S. where local CCR shortages persist and large coastal terminals are available there will be continuing opportunities for imported CCRs.[6]

Fly ash is the largest volume CCR produced and it is an important component in concrete manufacturing. It enhances concrete performance and longevity, so its availability to the construction materials industry is essential.

A reduction of CCR volumes would detrimentally affect highway and construction applications. Fly ash concrete has a compression strength of 18,000 psi while cement-only concrete is 14,000 psi. It may be difficult to make a viable alternative product that would achieve the strength of fly ash concrete. The lower strength of cement-only concrete means columns and foundations must be thicker or larger to carry the same loading. Larger columns reduce square footage and increase construction costs. Therefore, costs might rise substantially, with a rough estimate of a 25 percent increase indicated by some ACC members.

ACC is very concerned about EPA's proposed approach regarding storage and the imposition of additional compliance requirements on beneficial users of CCR in the U.S. There is no new evidence from EPA that the original regulatory approach caused potential or actual harm to the environment, so this new approach is unwarranted. We urge EPA not to pursue this new approach, which will result in a poor environmental outcome – reduced beneficial use of CCRs.

Standard for Boron

We appreciate EPA's indication in its new proposal that it is still considering the comments received in response to its March 2018 proposal to add boron to Appendix IV. ACC reiterates, as stated in our comments in response to that 2018 proposal, that there is no Maximum Contaminant Level for boron established by EPA and one is not necessary to meet RCRA's protectiveness standard.

Summary and Conclusions

ACC appreciates the opportunity to submit these comments that address unnecessary or unworkable elements of EPA's CCR proposal. EPA must avoid regulatory requirements that will erect barriers to the continued successful beneficial re-use of CCRs and negatively impact opportunities in a robust demand marketplace. This would have adverse environmental, societal, and economic consequences, and would be in conflict with EPA's support of beneficial re-use and the objectives of RCRA.

[4] Danny Gray, Charah Solutions, Inc., "Coal Combustion Residuals – A Sustainability Success Story Impacted by Policy and Regulatory Market Drivers", American Coal magazine, Issue 2 2018, p. 57.
[5] *Ibid.*
[6] *Ibid.*