



February 22, 2021

Ms. Rita Chow
Office of Resource Conservation and Recovery
Resource Conservation and Sustainability Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Mail Code 5306-P
Washington, DC 20460

Submitted electronically at <http://www.regulations.gov>

Attn: Docket ID No. EPA-HQ-OLEM-2020-0463

Re: Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Reconsideration of Beneficial Use Criteria and Piles; Notification of Data Availability

Dear Ms. Chow:

The American Coal Council (ACC) submits these comments in response to the Environmental Protection Agency's (EPA) Federal Register Notice of December 22, 2020 regarding its notice of data (NODA) availability and request for comment with respect to its reconsideration of beneficial use and piles subsequent to EPA's previously-proposed August 14, 2019 regulation, "Hazardous Waste 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 ACC is a nonprofit trade association in its 39th 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. Changes to regulations, inconsistencies in regulations, and regulatory uncertainty affect businesses large and small. There are real consequences to people, their livelihoods, and their families.

The U.S. Energy Information Administration (EIA) reports that from 2011 to mid-2020, 95,000 megawatts of coal capacity was closed or converted to another fuel.¹

Many of the coal plant closures or conversions have been attributed to EPA regulations.

According to the EIA, coal plant closures reached a high in 2015 driven in part by EPA's Mercury and Air Toxics Standards (MATS) rule.² The MATS rule was promulgated in early 2012 and went into effect in April 2015. Since the rule was not stayed during the more than three years it was under legal challenge, the power sector was put in the position of having to proceed with compliance plans to meet the April 2015 implementation deadline. In June 2015, just months after MATS became effective, the U.S. Supreme Court ruled against EPA, finding the agency had not adequately considered cost in relation to 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. The MATS rule demonstrates the significant impacts of regulations.

ACC urges EPA to proceed carefully in its continued consideration of beneficial use of coal combustion residuals (CCR), an environmental and sustainability success story.

EPA's news release about this NODA refers to EPA's objective "...to ensure our regulations promote and not hinder environmentally responsible beneficial use and are protective of human health and the environment." EPA's release further states, "Coal ash can be beneficially used to make new products, such as wallboard or concrete. Due to the many potentially useful properties of coal ash, a vast array of businesses from construction to agriculture and manufacturing choose coal ash as a substitute for other materials."³

¹ U.S. Energy Information Administration, "Today in Energy", September 1, 2020.

² U.S. Energy Information Administration, "Today in Energy", December 28, 2018.

³ U.S. Environmental Protection Agency, "EPA Seeks Information on Beneficial Use and Piles of Coal Ash", December 9, 2020.

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. Although beneficial use itself is exempt from regulation, CCR disposal regulations and regulatory uncertainty related to CCR disposal regulations can significantly impact beneficial use activities.

Revisiting the Beneficial Use Definition and the 12,400 Tons Issue

EPA had expressed a concern that the beneficial use exemption might be used to avoid disposal regulations by operations conducting “sham beneficial use”. To prevent this, EPA established a definition of beneficial use with four criteria:

- (1) The CCR must provide a functional benefit;
- (2) The CCR must substitute for the use of a virgin material, conserving natural resources that would otherwise need to be obtained through practices such as extraction;
- (3) The use of the CCRs must meet relevant product specifications, regulatory standards, or design standards, when available, and where such specifications or standards have not been established, CCR may not be used in excess quantities; and
- (4) When unencapsulated use of CCR involves placement on the land of 12,400 tons or more in non-roadway applications, the user must demonstrate and keep records, and provide such documentation upon request, that environmental releases to groundwater, surface water, soil, and air are comparable to or lower than those from analogous products made without CCR, or that environmental releases to groundwater, surface water, soil, and air will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use.

As ACC had noted in our October 15, 2019 comments regarding the mass-based numerical threshold of 12,400 tons, EPA could correct the math error for that 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.

However, it may be best and most consistent with EPA’s role to support and indeed promote beneficial use, to eliminate the fourth criteria – since the first three criteria adequately address EPA’s initial concern about sham beneficial use. Additionally, the 12,400 tons number has already raised concerns in the beneficial use community. Of course, no one wants to exceed this 12,400 tons threshold and trigger an environmental review. This miscalculated and very low threshold has already caused some parties to landfill CCR above that threshold and purchase virgin materials instead. This puts EPA’s fourth criteria in conflict with EPA’s first and second criteria and is clearly not desirable from an environmental standpoint.

Revisiting the Treatment of CCR Piles Issue

EPA's proposal had provided for a single approach for the treatment of CCR piles, characterizing the piles simply as "storage" regardless of where such a pile is located and whether it would be disposed of or would be beneficially used. 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 have been trying to prevent excessive material being stored on a speculative basis for "presumed" beneficial use. But EPA's new approach introduced 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 use applications must be able to have confidence in an adequate and reliable supply.

Furthermore, there are effective storage, handling, and quality assurance practices for the CCR products within the beneficial use marketplace. Otherwise, how would the products be properly preserved for beneficial use? Additionally, there are often state-level requirements such as NPDES permits, discharge requirements, and dust control measures already in place.

It is unnecessary in this longstanding, well-developed beneficial use marketplace for EPA to add burdensome reporting requirements now. If EPA has concerns about validating beneficial use, there is relevant data available from the normal business management of these products to address this. ACC suggests that EPA provide a categorical exemption of reporting requirements for storage of these products that is containerized, not in direct contact with the ground, or located on property already subject to other controls such as NPDES permits and facility air permits.

If EPA does not modify its proposed approach, the beneficial use of U.S.-produced CCRs will be disincentivized and far lower volumes of CCRs recycled. This would undermine environmental and sustainability objectives and outcomes, and many years of progress in recycling CCRs. It would stand in contrast to EPA's history of supporting beneficial use and what Congress set forth in RCRA which directs EPA's rulemaking authority.

Beneficial Use Marketplace

The closure of so many coal power plants has already negatively impacted CCR supply and is changing the CCR marketplace and logistics. This also has environmental consequences. The U.S. market is experiencing a trend of more domestic fly ash being shipped greater

distances to reach customers.⁴ 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 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.⁵ The predominant use of imported CCRs in the U.S. has been in cement manufacturing.⁶ Though imported volumes have been 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.⁷

Byproducts from coal generating units with well-established markets include:

- Fly ash is the largest volume CCR produced and it is an important component in concrete production and cement-making. It enhances concrete performance and longevity, so its availability to the construction materials industry is essential.
- Bottom ash or boiler slag is a coal combustion byproduct used to make blasting grit and roofing granules.
- Synthetic gypsum, a byproduct of flue gas desulphurization units (“scrubbers”) at coal generating units, is used in wallboard, and as a soil enhancer in agricultural application.

Each of these is a recycling success story. Reduced CCR volumes would detrimentally affect these important uses, especially highway and construction applications.

Conclusion

ACC remains very concerned about EPA’s proposed approach regarding the CCR beneficial use definition and CCR storage aspects, and we urge EPA to make the changes suggested herein. This will help to continue the long history of successful beneficial use of CCRs and it will better align with EPA’s role to support beneficial use and meet the objectives of RCRA.

ACC appreciates the opportunity to submit these comments. Please contact me with any questions at bmonseu@americancoacouncil.org or (202) 756-4540.



Betsy B. Monseu
CEO

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.*

⁷ *Ibid.*