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Environmental, Energy & Technical Committee Meetings

Sept 15-16, 2009
Radisson Hotel, Reagan National Airport
Arlington, VA
(703) 920-8600

M I N U T E S

TUES-WED SEPTEMBER 15-16, 2009

FOCUS GROUP SESSION

Focus Group Meetings - **Fred Fendt**, The Dow Chemical Company

Carl Bozzuto, ALSTOM Power, Inc., was asked to present his material that was given at the Industrial Emissions Conference on the impacts of biomass and alternate fuels on boiler equipment. As always, the fuel is the major consideration for any boiler design. The major factors include alkalies, chlorides, sulfur, lead and zinc, ash, and moisture. These lead to many issues that need to be considered in the design or modification of any boiler. Transportation and handling issues also come into play. Biomass and waste fuels tend to be low in heating value and high in moisture. This leads to the need for handling more of the material and producing correspondingly more gas weight and, with some fuels, more ash. The designer can make allowances for all of these factors provided that they are known in the design stage. Everything begins with the true characterization of the fuel.

Ray Ganga, McBurney Corporation, presented some of the issues with solid fuel alternatives. Again, the knowledge of the fuels is critical to the success of the design. Biomass is quite variable. Concentrations of constituents can vary by 2 orders of magnitude (i.e. from 0.04% to 4.0%) across similar types of fuels (i.e. grains, rice hulls, barley needles, etc.). Phosphorus can be a factor when phosphate fertilizers are used. This can cause layered deposits. The alkali materials tend to condense out first. As a deposit is formed, the surface temperature of the deposit increases. At the increased temperatures, phosphate deposits begin. As the surface of the ash becomes sticky, other solid matter just sticks to the deposit, causing the size of the deposit to grow rapidly. Eutectic compositions can also cause low melting components in the furnace. The phase diagrams for these materials are rather complex. Indices are used to help guide the designer in assessing these issues. The alkali to silica ratio and the alkali to heating value ratio are two of the more common and reliable indicators.

Another issue is fuel bound nitrogen. Many biomass fuels have higher fuel bound nitrogen contents, which lead to higher NOx emissions, as there is more nitrogen available to be converted into NOx. All of these factors tend to move a design to a larger furnace for a given steam flow. The larger furnace provides a longer residence time for reducing emissions and temperature levels in the gas. It also allows for the higher gas weights that are more common with biomass fuels.

Fuel distribution, seals, air systems, heat release rates, and velocities are all design variables that can be optimized for biomass performance. Some biomass fuels, such as rice hulls, are dry, fine, and

granular. These fuels are better suited for suspension firing. For these types of fuel, better fuel and air mixing can be obtained, leading to more rapid mixing and combustion of the fuel. A number of example units were shown. Interestingly, one of the smaller units burning coffee grounds had some initial problems with higher NOx emissions.

Monique Streff, Evergent Technologies presented their technology for producing a liquid fuel from biomass. Evergent is a joint venture between UOP and Ensyn of Canada. Ensyn has been operating pyrolysis technology for over 20 years. The joint venture was formed in 2008 in provide pyrolysis oil technology for fuel oil substitution and electricity generation. The technology is focused on lignocellulosic biomass options. A fast pyrolysis of the biomass produces a pyrolysis oil that can be upgraded to various fuels. Rapid Thermal Processing (RTP(tm)) Technology is use the pyrolyze the material. The largest single unit is 100 ton/day. A number of small units (from 1 - 45 ton/day) have been in operation for specialty chemicals. The largest unit went into operation in Canada in 2007.

Forest products and agricultural wastes are the primary sources of fuel. Consideration is being given to construction/demolition waste and possibly MSW. Raw biomass needs to be dried to 5 - 6% moisture as water is a heat sink. Size impacts the heat transfer. The preferred size is between 1/8" and 1/4". The capacity of the unit is expressed on a bone dry feed basis. For 100 lbs of hardwood, the typical yield is 70 lbs of pyrolysis oil, 15 lb of by-product vapor, and 15% char. The pyrolysis oil contains about 60% of the energy content of crude oil. The oxygen content is about 40 - 50%.

The oil has a relatively high viscosity and acidity. It is a pourable and transportable liquid fuel. The pyrolysis oil can be used directly as a fuel. The nitrogen and sulfur contents are fairly low, leading to low NOx and SO2 emissions. Stainless steel piping, tanks, and equipment are required due to the acidity of the oil. The fuel should be stored separately from fossil fuels. With a $40/ton feedstock cost, the fuel cost is projected to be 25 - 30% lower than the cost of #2 fuel oil.

A 3 step work process is envisioned, starting with project scoping (8 - 12 weeks), detailed development (6 months), and project execution (12 - 18 months). Equipment delivery and performance is guaranteed. The system is designed for 330 days on stream factor.

Rachel Goldstein, US EPA, provided an update on the EPA Landfill Gas Program. Methane is a greenhouse gas that is 20 times more potent by weight than CO2. Landfills are now the second largest man made source of methane in the US. Agriculture is the largest source. The EPA Landfill Methane Outreach Program was established in 1994. This voluntary program creates alliances among states, energy users/providers, the landfill gas industry, and communities. The goal was to reduce methane emissions by lowering barriers and promoting development of cost effective and environmentally beneficial landfill gas energy projects. There are a number of legislative and regulatory activities at various stages that propose to report and regulate greenhouse gases.

Landfill gas is a byproduct of the decomposition of MSW. It is typically 50% methane, 50% CO2, and trace amounts of organic compounds. For every million tons of MSW, roughly 1 MW of electricity can be generated. There are now over 500 operational projects in 44 states. Over 12 billion Kwhr of electricity and 85 billion cu.ft. of landfill gas (LFG) is being delivered to end use applications annually. These projects run 24/7 with availability levels over 90%. Pipelines are now up to 20 miles. LFG is typically a lower cost fuel than comparable fossil fuels (oil and gas). A typical project using 800 scfm

has a 5 mile pipeline and runs for 15 years. The total capital cost is $2.7 million. The gas compression and treatment is about $1.1 million and the pipeline is about $1.6 million. Annual O&M is about $120 K/yr.

Federal financial incentives include a production tax credit (1 cent/ kwhr), renewable energy bonds, and a renewable energy production incentive. There is also some stimulus money for a 30% investment tax credit or a cash grant. Reduced fuel costs and reduced GHG emissions are the two prime benefits from using LFG. Depending up what fuels are displaced, there could also be some reduction in criteria pollutants as well. The first federal project started up in 2003 at the NASA Goddard Space Flight Center in Maryland. The LFB fuels 3 boilers and provides 100% of the facility's HVAC requirements 90% of the time. A savings of $3.5 million over a decade has been estimated. BMW in South Carolina installed a 9.5 mile pipeline to the Palmetto Landfill. In 2003, the 4 gas turbines were retrofitted to burn LFG. A total of 4.8 Mw are generated along with 72 MMBTU/hr of heat recovery. In 2006, a paint shop was converted to use LFG. BMW now gets 70% of its energy needs from LFG. The savings has been estimated to be $5 million/yr in energy costs. During the next year, 2 new gas turbines will replace the 4 older gas turbines to generate 11 MW.

There are some 500 landfills with gas collection, but no energy project and nearly 1000 landfills that do not have a gas collection facility. EPA provides direct project assistance to analyze the landfill resource, identify potential matches, assess landfill and end user facilities, evaluate project possibilities, and initiate feasibility studies. An international partnership program has been initiated to develop cost effective methane recovery opportunities in coal mines, landfills, oil and gas systems, and agriculture. Over 800 organizations are now participating with 28 partner governments (including Germany, Italy, Japan, and the UK).

Larry Moot, KeLa Energy, gave a brief presentation on an engineered fuel derived from coal fines, recycled binding materials, and renewable biomass. The fuel is engineered to meet specifications in terms of heating value, biomass level, and moisture content. Recovered coal fines, recycled carpet materials, recycled plastics, and other biomass are used to produce the fuel. The resulting moisture content is 2%. The process lowers the moisture content. The final fuel is not affected by water or moisture. The biomass comes from timber waste, mill waste, agricultural waste, and urban sources. The resulting pellet ignites easier than coal. No moisture is absorbed during storage. The pellet doesn't fracture, making the particle size consistent. Unburned carbon is reduced. Flame temperatures are slightly higher than coal on a stoker. SO2 emissions are reduced compared to the parent coal as the coal is somewhat diluted by the binder. There is also some limestone in the binder which absorbs some SO2. NOx emissions can be reduced as the fuel is easier to burn requiring lower excess air. The addition of biomass provides CO2 reductions. The first commercial scale plant is expected to break ground next month.

ENERGY COMMITTEE SESSION

Frederick P. Fendt, The Dow Chemical Company, *Energy Committee Chairman*
Robin Mills Ridgway, Purdue University, *Energy Committee Vice-Chairman*

Introductions - **Fred Fendt**, The Dow Chemical Company

The usual round the table introductions were done. Bob Corbin introduced the new members and guests. Bob Bessette gave the anti-trust admonition. The June minutes were approved.

Technical Points one the Energy Bill - **John deRuyter**, E.I. DuPont de Nemours & Co.

The Energy Bill from the Energy and Natural Resources Committee is S. 1462 and is over 500 pages. One of the strategies in the Senate might be to pass an energy bill in lieu of either a climate bill or the health care bill. The bill calls for a new agency that would support the deployment of clean energy projects and products. The goal would be to provide/promote financing for technologies that are deemed too risky for normal commercial development. A renewable electricity standard allows for both generation and energy efficiency. New and incremental hydropower is included. The requirement starts at a modest level and increases to 15% during the last decade ending in 2039.

Energy efficiency and water efficiency are to be "balanced". A study is directed to the National Academy of Science. There is a section on increased renewable energy development on public lands. This would be aimed at getting solar and wind power on public lands. Energy efficiency efforts will include partnerships with industry to create road maps for improved energy efficiency. Another report form the NAS would cover the supply chain aspects of more energy efficient technologies. Improved building efficiency targets are proposed with improvements of 30% and 50% before and after 2016. A total economy goal of increasing energy efficiency (BTU/$ of GDP) by 2.5%/yr is proposed (the average is 1% and the best has been 2.5% during the last energy crisis) is proposed. The identification of all domestic energy resources and promotion of "responsible" development of these resources is called for. R&D for Carbon Capture and Sequestration (CCS) is proposed. Further development of carbon markets is proposed.

DOE ASME Energy Standards and USCEEM - **Fred Fendt**, The Dow Chemical Company

The DOE has developed preliminary standards for steam, pumps, compressors, and process heaters. These standards have been beta tested for use. Bob Bessette has asked for results from the testing. It is anticipated that these standards will be ANSI approved standards. The US Council for Energy Efficient Manufacturing will set up a certification program similar to the Energy Star program. There will be tracks for both mature and new plants. The USCEEM is intended to be a stand alone organization supported by industry. The DOE will fund the start up of the program. The organization would manage the certification process. The organization will not conduct the audits, but conduct the certification of the auditors. It is anticipated that this certification process will be helpful in recognizing any efficiency gains that might be used for CO2 credits.

ENVIRONMENTAL COMMITTEE SESSION

Maxine D. Dewbury, The Procter & Gamble Company, *Environmental Committee Chairman*
Ann McIver, Citizens Thermal, *Environmental Committee Vice-Chairman*
Committee Leadership - Bob Bessette, CIBO

Frank Ferraro has been promoted from Wheelabrator Technologies to the parent company. As such, he resigned from the CIBO Board. The CIBO Board appointed Ann McIver to the Board to replace

Frank. Since Board members cannot hold committee leadership positions, Ann had to give up the Vice Chair position on the Environmental Committee. Rob Kaufmann of Koch Companies Public Sector LLC (Georgia Pacific) was nominated and approved by the committee. The minutes of the June meeting were approved as written.

CO2 Legislation/Regulations - Rob Kaufmann, Koch Companies Public Sector, LLC

In the Waxman/Markey bill, Title I covers clean energy. A renewable energy standard of 6% by 2012 and 20% by 2020 is proposed. Utilities can meet these requirements by purchasing "renewable electricity" from industrials. Up to 25% can be obtained by energy efficiency. States can petition for 40%. Nuclear, hydro, CCS, and "non-renewable biomass" do not count as renewables for this Title. Smart grid activities come under this title. There is a separate title for Energy Efficiency (Title II). The major programs include building efficiency, lighting, appliances, transportation, and other programs. The industrial energy efficiency program will be run by DOE. There will be a motor efficiency rebate program, an electric and thermal waste energy reward program, and a water program.

Funding for these programs is anticipated to come from some kind of cap and trade scheme. Reduction targets and timetables start at 3% and escalate to 83% by 2050. A study by the NAS will determine if these targets are doable. The covered gases are the 5 gases in the Kyoto protocol plus nitrogen trifluoride. EPA can add others. There will be mandatory GHG reporting. The applicability will be down to 10,000 tons/yr. Vehicle fleets will be down to 25,000 tons/yr. Covered sources include EGUs (downstream) and gas/liquid fuels (upstream) in 2012, industrials in 2014, and natural gas distribution companies in 2016. Renewable biomass combustion is excluded. In principal, 85% of US GHG emissions will be covered by 2016. Free allowances/auction revenues are split over a number of entities including electricity consumers, natural gas consumers, refineries, trade intensive industries, and deficit reductions.

Special rules for trade intensive industries include certain metrics in order to qualify. There is trade intensity metric, an energy intensity metric, and a GHG intensity metric. There is an industry code system that identifies companies and products. Multi-product plants get some kind of pro-rated assessment. The NAICS Code system is proposed to be the basis for the product delineations. A total of 15% of allowances are reserved for this sector.

Cost containment features include allowance trading (no restrictions), unlimited banking, borrowing (with and without interest), strategic reserve, and international allowances. There is also the offset program. Capped sources can use up to 2 billion offsets of allowances annually (split between domestic and international offsets). Aside from CDM projects overseas, the offsets are aimed at agricultural aspects and forestry. A number of prohibitions were included. There will be no NAAQS for GHGs. There will be no HAPs for GHGs. There will be no NSR/PSD for GHGs. There will be NSPS for uncapped sources of GHGs. With the back lash experienced during the August recess on the health care proposals and the consideration of financial reform issues, the Senate has not released any bill at this time. There are also some jurisdictional considerations.

In the meantime, the GHG Reporting Rule is proposed. The endangerment finding went to OMB. Mobile source GHG rules are proposed. A GHG PSD is being considered. There might be an NSPS

as well. The "Johnson memo" is being "reconsidered". It remains unclear where all of this is going. One interpretation is that EPA is attempting to pressure Congress into passing a climate bill by proposing a plethora of rules that are "unworkable" in total.

The GHG Reporting Rule is OMB and there have been a lot of meetings. Issues include delayed implementation, certification requirements, use of best available data, unit vs facility level reporting, and boiler protocols.

The Endangerment Finding is being challenged by the US Chamber of Commerce. Litigation is a certainty. A key issue is welfare vs human health. The EPA PSD/Title V Rule for GHGs is at OMB. Key issues include major source threshold for PSD and Title V, significance threshold for GHGs, application of the PSD/NSR reform rule, and BACT determinations.

The NSPS for Boilers is under voluntary remand requested by EPA. EPA is interested in integrating the NSPS and the CAMR replacement rule. With the remand, the inclusion of a GHG NSPS becomes a possibility. The original rule had a CO2 requirement, but this was stripped out due to awaiting the Mass v EPA decision. The follow categories include cement, refineries, chemicals, and possibly pulp and paper.

CIBO does not take a position on cap and trade, taxes, climate change science, or direct legislation. However, given any legislation in those areas, CIBO does comment on issues related to industry. Examples include the definition of CHP, the consideration of both useful thermal energy and electrical energy, the definition of biomass and renewable biomass, the classification of GHGs under any climate bill, federal preemption rules, and allocation rules. John deRuyter, E.I. DuPont de Nemours & Company, prepared some suggestions for these rules and definitions.

Waste Energy Registry - **Katrina Pielli**, US EPA

The comment period is still open on this rule. Congress directed EPA to establish criteria for including sources or sites in a Registry of Waste Energy Recovery Operations. The goal is to provide a list of economically feasible waste energy recovery opportunities in the US based on a survey of industry. The survey is voluntary. The potential savings of criteria pollutants and GHGs must be included. A grant program could be developed. An annual report to Congress is required. During the past year, over 100 diverse stakeholders are to hear feedback on the program. The definition of waste energy includes exhaust heat or flared gas, waste gas or tail gas, pressure drop in any gas, and other forms of energy as determined by EPA.

EPA has proposed to include CHP in the waste gas or tail gas section. Uniform thresholds across sectors will be used. Any facility with 100 MMBTU/hr or 1 MW average annual electric demand. Secondary thresholds will also be applied, such as 4500 operating hours/yr. Some 11,000 facilities are anticipated. Congress suggested that a 5 year payback period should be used.

The Registry will be a public document. Sites will be listed by name and address and aggregate the data at the site. A Waste Energy Survey Tool (WEST) would be used to help process data on the host site's computer. Then the summary data would go to the registry. The tool would be an interview based software that would check submittal data against the registry criteria so that only data that meets the criteria would be included. Thus if a site has many processes, but only 2 meet the criteria,

the data from the 2 processes will be aggregated and that data will be submitted to the registry. The simple payback calculation is done with the total installed cost divided by the projected annual savings. No credit is taken for electricity or thermal sales.

The Registry is not to be developed or used for the primary purpose of making sales of excess electric power. The idea was not to have another PURPA program. Thus, a potential project would have to meet one of three primary purpose criteria - at least 50% of the energy output of the site would be used for industrial or commercial purposes (not electric), the site is located in a State that is not to implement the regulatory sale of excess power, and/or the owner and the utility petition to have the site registered. The primary driver to be listed would be to be eligible for the grant program to be administered by DOE or any potential regulatory incentives. The web site is www.epa.gov/wasteenegyregistry. At the moment, DOE does not have the funding for this reward program.

There is also a CHP Partnership (similar to the LFG Partnership) that provides assistance to partners in the evaluation of CHP opportunities. The partnership provides access to other members including equipment suppliers, regulators, etc. for networking and information gathering. Their Annual Partners Meeting is October 102, 2009 in NYC. The web site is www.epa.gov/chp/events/partnermeet_2009.html.

Flare Issues - **Lisa Jaeger**, Bracewell & Giuliani, L.L.P.

The refinery industry requested a ruling on a project that installed a new coker with 3 vents to the flare header system. EPA concluded that the 3 vent streams constituted a change to operations of the flare and required NSR/PSD. The finding was challenged. EPA moved to dismiss the case. The filing claimed that the assumptions were incorrect and that the EPA made a ruling that did not go out for comment and rulemaking in making a rule rather than a judgment on an existing rule. The judgment was written is such a way that it could apply to anyone who had a flare.

EPA ' s Change in Fuels Exemption Policy for NSR and NSPS - **Jay Hoffman**, Trinity Consultants, Inc.

The PSD exemption for alternative fuels applies to the definition of physical or operational change. The exemption applies when the source was capable of accommodating the alternative fuel before Jan. 6, 1975 or the change would not be prohibited under an enforceable permit after Jan. 6, 1975. This works like the RMRR exemption. This rule is not contained in the Clean Air Act. The NSPS has a similarly worded exemption. The exemption was never intended to apply to fuel additives. Even the blending of primary fuels (i.e. lignite and bituminous coals) is considered a "change in the method of operation". Any fuel that was not known to exist (was not generally available as a primary fuel) before Jan. 6, 1975 cannot use the exemption.

For older units, guidance should mirror the RMRR (routine maintenance and repair) guidance. The 1981 EPA Guidance indicated that the plant should not only have contemplated the fuel, but also installed the equipment to burn the fuel. In the 2006 guidance, the EPA went further to require such equipment to be installed and continuously available. MSW was originally exempted. However, the guidance has narrowed over time. TDF is not considered MSW.

Not all fuel conversion projects (which technically fail the exemption) will require new or upgraded emissions controls. For example, an older unit that was always capable of burning coal, but needs

some additional coal handling equipment. The controls equipment may only apply to the new equipment and not to the boiler. The concern is that units that might convert to gas or biomass (to reduce CO2) could end up in New Source Review (NSR) even though emissions would be reduced.

Boiler MACT, CAIR, and Other Combustion Rules - **John deRuyter**, E.I. DuPont de Nemours & Co.

There are multiple rules in the hazardous air pollutant arena. The most important one for CIBO is the Industrial Boiler MACT. The original rule was issued in 2004, but was struck down and vacated by the Court. A major test program is underway in order to generate data to support a revised rule. EPA wants to justify the use of surrogates in place of the individual HAPs. Further, EPA wants to justify the classification of units. Test results are supposed to be submitted to EPA by the middle of Oct.

There have been some issues with the electronic reporting tool. Data has also been requested for criteria pollutants and some additional HAP. There have been delays at labs processing the samples. There is an emissions factor program that will use the data from the reporting tool to fix some of the EPA emissions factors. The latest extension for data submittal is Dec. 15th.

The proposed rule is now scheduled to come out on April 15th. The final rule is now scheduled for Dec. 15th, 2010. This is a very aggressive schedule. The health based compliance alternative is still in limbo. This will not be in the rule. However, there is still a chance that one sentence will be in the preamble requesting comment on the HBCA. The Portland Cement preamble was issued with this sentence. There is support for HBCA at OMB and the SBA.

The definition of solid waste is still under debate. The EPA Office of Solid Waste is inclined to stick with the criteria of discard for defining a waste. Something that has been discarded has traditionally been classified a waste. Materials that remain on site can be considered as fuel. Materials that have been discarded are wastes. Thus, tires that are reclaimed from a land fill are considered as wastes. Tires that are collected from dealers and sent for combustion can be considered as fuel. Boilers that burn wastes would be considered as incinerators. The definition of "discard" is now being worked over (who discards and when it is discarded).

In the meantime, the question of the MACT Hammer is still unresolved. Some states have started to implement "case-by-case" MACT. The EPA request that went to OMB does not appear to going anywhere. For new units, section 112(g) authority exists (but with no formal limits). States have been looking for guidance from EPA. This results in a circular problem as there is no guidance.

The CAIR and CAMR rules that applied to utilities were also vacated by the Court. The CAIR rule was subsequently remanded so that some rule is in place in the interim while EPA revises the rule. Senator Carper has come up with a new bill with cap and trade covering SO2, NOx, and mercury. The SO2 target is lower than CAIR (1.5 million ton cap compared to 2.6 million tons in CAIR). The NOx cap is the same. The mercury requirement is 90% reduction. The Carper proposal would apply to electric generating units larger than 25 MW. EPA is planning to propose a new CAIR rule in January, 2010.

The potential for including industrial units in CAIR (or in a separate CAIR) is being discussed. EPA is proposing additional modeling to determine the impact on attainment is various regions. Model results have been questioned as a result of monitoring data not verifying results and the fineness of the grid size. Current models use a 12 km grid. A 4 km grid shows fewer "violations". Typically, the finer grid

shows greater local impact with less transport. Complicating factors include the use of poor input data, terrain, accurate stack information, weather, etc.

Another concept is the High Energy Demand Day, which leads to intermittent compliance. It was suggested that a meeting with EPA to find out what kind of modeling is being proposed and how this will be done would be helpful. The OTC SAS Committee has requested comments on their workgroup's emissions limitations/cost proposal. A conference call will be set up for Monday. On the NSPS, EPA has taken a voluntary remand. It is likely that all of the boiler types will be revised. Some of the data from the MACT testing will likely be used in setting the revised NSPS standards.

NAAQS Update - **Rob Kaufmann**, Koch Companies Public Sector, LLC

The NO2 NAAQS were challenged on the basis that the data was not specific enough to pinpoint NO2 as the primary cause of the impacts. The usual arguments are being made with the ENGO's claiming the proposed level is not low enough and other claiming that it is too low. The ozone standard has to be submitted today. On PM2.5, the standards are likely to be tightened. PM2.5 and PM10 are now claimed to behave differently. On SO2, a one hour standard is being proposed for the first time. EPA is deciding against 3 parts of the Texas SIP related to NSR. This had to do with the states flexible compliance program. The program is different from the federal program in terms of a hard cap and the timing. The EPA is claiming that this program is not part of a federally enforceable program.

RCRA Ash - **Gary Merritt**, Inter-Power/AhlCon Partners, L.P.

At the end of the Clinton administration, EPA agreed to regulate ash under subtitle D (non hazardous) vs subtitle C (hazardous). EPA did not promulgate any specific rules. The TVA accident, the pressure is back to regulate under subtitle C. The key principle driving EPA is the need for a federally enforceable permit. There is a CCB (coal combustion byproduct) coalition group that was formed to push for subtitle D regulations. There is a web site at http://www.uswag.org/ccb.htm. Reportedly EPA will be proposing a subtitle C classification in mid October. The language is unsure. However, it may be similar to cement kiln residuals. This imposed certain chemical requirements that would allow some ash to be treated under subtitle D. Recycling and beneficial uses will likely be impacted due to exposure to CERCLA. Some "beneficial uses" may no longer be classified as such.

Classification as a hazardous waste will exclude a variety of sites as potential ash disposal sites. The EPA is being sued for not providing regulations. The State of Pennsylvania has been cited for " chronic and deliberate violations " of SMCRA through the state's "pattern and practice" of disposing of fly ash. Pennsylvania's proposed rules for beneficial use of ash in coal mines will be published shortly. The monitoring program requirements are significant. The "trigger" for determining future actions is under review.

A new problem is the total dissolved solids (TDS) levels in discharges. The natural gas industry has been using water to fracture wells in the Marcellus Shale. The water that comes back is high in TDS and chlorides in particular. Water in nearby areas has been showing higher TDS with more sulfates. The gas industry claimed the sulfates come from the mining industry. Pennsylvania and West Virginia have instituted end of pipe standards for TDS (at 500 mg/L) and sulfates and chlorides (at 250 mg/L). Other states are starting to investigate this issue.

Cooling Water Intake Structures - **Bob Bessette**, CIBO

The Clean Water Act Section 316(b) has restrictions on the amount of cooling water that can taken from a stream. For the most part, this applied to utilities. However, the level or amount of water that is utilized has been lowered and more plants will fall under these restrictions. We will be following developments.

Litigation Update - **Lisa Jaeger**, Bracewell & Giuliani, L.L.P.

The NSPS rule (NY v EPA) was ready for oral argument, but EPA went for a voluntary remand. The Ozone NAAQS (Miss. v EPA) was also pulled back. EPA is filing a revised rule today. The CEM rule revision (Specialty Gases v EPA) is nearing some kind of resolution. The Jan 1, 2009 compliance date is no longer valid. The " Johnson memo " is being pulled back. The Wisconsin SIP NSR case is moving toward some kind of agreement. The SSM (start up, shut down, malfunction) exemption for NSR was struck down by the Court. Industry sought a rehearing, which was denied. However, the Court has not issued its mandate, so the SSM provisions are still in effect. Two different requests for stay have been filed. The EPA requested 60 days and was not challenged. Industry requested 90 days and was challenged by the Sierra Club. The industrial coalition has indicated that it will take the case to the Supreme Court on the grounds that the circuit court was incorrect in re- opening the SSM issues that have been long standing and the other circuit courts have interpreted the re-opening provisions separately.

GOVERNMENT AFFAIRS SESSION

Anthony Reed, Archer Daniels Midland Company**,** *Government Affairs Committee Chairman*

Government Affairs - **Karen Neale**, Hummingbird Strategies, LLC

Karen has retired from International Paper, but has agreed to help CIBO with contacts on Capital Hill. Anthony Reed of ADM will take over as chair of the Government Affairs Committee. The Senate is back is session. During the recess, the members took a lot of flak over the health care legislation. This topic will likely take up a lot of time. Although the president wanted a bill to be passed prior to Copenhagen, the climate bill is still contentious. An Energy Bill has been put together as a potential alternative that could be passed rather quickly. There is a bill proposed by Senator Cantwell that would establish a cap on carbon at the upstream level (production and imports) and an auction system at that level. There would be some rebate to consumers and the same target of 80% reduction. The system starts in 2012. There are 6 different committees claiming jurisdiction over climate legislation. Senator Alexander has a bill that just focuses on utilities and transportation. Next year is an election year for the House of Representatives and for part of the Senate. It may be difficult to get a bill passed during an election year. There will be debate in the Senate, but a bill could be difficult. Senators Boxer and Kerry are also putting together a bill. Senator Boxer plans to hold hearings in October. In spite of all of these bills, the prime vehicle is the Waxman Markey bill that has passed the House.

There is a chemical security program that is just getting in place. It was expected that a one year extension of the existing program would be authorized. However, some of the NGOs have pushed for a more stringent requirement in the Homeland Security bill. Again, the timing is difficult, as debate would have to compete with health care and climate/energy legislation. Chemicals such as chlorine, ammonia, propane, and other fairly common industrial chemicals could come under regulation.

As soon as something goes to OMB, the RCRA Ash Committee will be energized to contact their congressional representatives concerning this issue. The critical issue is to keep fly ash under subtitle D. There was a bill proposed by Congressman Rahall of WV, but it only covered impoundments. This bill was held off pending the EPA filing.

Next, Environmental, Energy & Technical Committee Meetings
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