



## **Coal Ash Regulation Under RCRA**

### **TALKING POINTS**

**REQUEST:** Support for Senate consideration of H.R. 2218, the *Coal Residuals Reuse and Management Act of 2013*

#### **EPA PROPOSED REGULATION**

- EPA has proposed two options for regulating coal ash under RCRA: as nonhazardous waste under Subtitle D or as hazardous waste under Subtitle C. EPA will make a decision and publish a final rule 12-19-14.
- CIBO opposes regulating coal ash as hazardous waste, which contradicts EPA's determinations that coal ash is not hazardous. Regulating the material as hazardous will create major waste disposal challenges for all coal-fired facilities, with no corresponding environmental benefit. It would also make it impossible to use coal ash for highly effective beneficial uses (such as: reduced greenhouse gas emissions, reduced need for disposing in landfills, and reduced use of "virgin" resources), due to the liability attached to hazardous materials. CIBO members who combust coal and produce ash would face significant potential liabilities were the material to be classified as hazardous.
- The proposed rule does not cover the beneficial use of coal ash in coal mine land reclamation.
- The proposed regulation focuses on ash generated at utilities. EPA's regulation of coal ash from those sources will set a precedent for how EPA will regulate coal ash from industrial sources without conducting the appropriate studies. Further, because the rule is implemented by States not EPA, States will likely regulate coal ash from all industrial sources not just utilities. Therefore, CIBO and others concerned with regulation of industrial sources have a direct interest in EPA's regulation.
- EPA has a section on the beneficial reuse of encapsulated coal ash. However, the agency does not have similar information for un-encapsulated coal ash.

#### **PROPOSED LEGISLATION**

Legislation now under consideration, which has been adopted by the House but not by the Senate, would legislatively re-establish State authority to regulate coal ash as nonhazardous waste and the full authorities of States and EPA to ensure that RCRA standards are met for coal ash.

- CIBO supports the proposed legislation and is part of the industry coalition supporting a legislative approach.
- CIBO has supported revisions to the legislation that would maintain the balance between federal and State regulatory authority under RCRA.
- CIBO is closely watching action in the Senate on this bill and would oppose amendments that would undermine the essential federal/state balance of RCRA.

Congressional action on this legislation is far preferable to an EPA rulemaking.

- It would re-establish Congress's intention and RCRA principles.
- It would avoid the uncertainty that will come with an EPA rulemaking. Even if EPA finalizes a rule that retains the existing non-hazardous Subtitle D regulation of coal ash, that final rule will inevitably be challenged in court. The lawsuit will mean another 2 years of uncertainty during the litigation and an ultimately uncertain outcome.

#### **ENVIRONMENTAL EFFECTS FROM ASH SPILLS**

Several highly publicized ash spills from wet impoundments have fueled environmentalists' calls for regulation of coal ash as hazardous waste.

- The environmental impacts result from the ash spills, not to the constituents of the coal ash. Studies have shown no hazardous long term environmental effects from ash spills.
- Listing coal ash as hazardous waste will not prevent ash spills from impoundments. The spills are caused by structural defects in wet impoundments of coal ash. Under existing law, States and EPA have authority to regulate impoundments to prevent spills. The proposed legislation would strengthen these authorities.
- The legislation would allow the States to continue to expand and improve their programs.