

Coal Ash Regulatory Update

CIBO

Energy and Environmental Meeting

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- ▶ EPA has entered into a Consent Decree (filed with the U.S. District Court in Washington, D.C.) with a Coalition of Environmental Groups to publish a notice of final action regarding Coal Combustion Residuals by Dec. 19, 2014
 - ▶ ***“The EPA Administrator shall, by December 19, 2014, sign for publication in the Federal Register a notice taking final action regarding EPA’s proposed revision of RCRA Subtitle D regulations pertaining to coal combustion residuals.”***
- ▶ EPA said the consent decree does not dictate the substance of the rule the agency will issue. (See X. Agency Discretion-Paragraph 18)

The Outstanding Issue

**Will EPA Stay the Course or
Change Course?**

**Subtitle D or Subtitle C Rule
Making**

Environmental Groups Belief:

- ▶ We still think there is ample opportunity, and need, for EPA to rule that coal ash is hazardous waste,” said Jared Saylor of the national law firm Earthjustice, which represented the environmental groups

Headwaters

- ▶ **HEADWATERS INCORPORATED (NYSE:HW)**, the nation's largest manager and marketer of Coal Combustion Products ("CCPs"), today applauded a U.S. Environmental Protection Agency action that will lead to regulatory certainty for coal ash as a "non-hazardous" material.
- ▶ A Consent Decree signed by Headwaters and all other parties to the Appalachian Voices vs Gina McCarthy lawsuit was delivered to the Federal DC District Court on January 29, 2014. The Consent Decree states, "The EPA Administrator shall, by December 19, 2014, sign for publication in the Federal Register a notice taking final action regarding EPA's proposed revision of RCRA Subtitle D regulations pertaining to coal combustion residuals."

ELGs for Steam Electric Power Generating Sources

- ▶ EPA is to finalize the proposed rule for Effluent Limitation Guidelines for the Steam Electric Power Generating Sources.
- ▶ This rule making is a result of a Consent Agreement with “Defenders of the Wildlife” to publish draft rules and finalize the rules by May 22, 2014.
 - ▶ EPA has put the Defenders of the Wildlife on Notice that they will take beyond May 22, 2014, to finalize the rule.

Timing

- ▶ There is a good probability that EPA will need to finalize these two rules at the same time as the rules support the actions of each other due to the inter-relationships of the two programs.

Beneficial Use

(<http://www.epa.gov/wastes/consERVE/imr/ccps/benfuse.htm>)

- ▶ Beneficial use is the reuse of coal combustion residuals (CCR) in a product to replace virgin raw materials that would otherwise be obtained through extraction, thus conserving natural resources. EPA encourages the beneficial use of coal combustion residuals in an appropriate and protective manner, because this practice can produce positive environmental, economic, and performance benefits, including:
 - ▶ Environmental benefits such as reduced greenhouse gas emissions, reduced need for disposing in landfills, and reduced use of virgin resources.
 - ▶ Economic benefits such as reduced costs associated with CCR disposal, increased revenue from the sale of CCRs, and savings from using CCRs in place of other, more costly materials.
 - ▶ Performance benefits such as improved strength, durability, and workability of materials (e.g., concrete).

Encapsulated Reuse

- ▶ Encapsulated uses are those where coal combustion residuals are bound in a product, such as in wallboard, concrete, roofing materials, and bricks.
- ▶ EPA developed a methodology for evaluating encapsulated beneficial uses of coal combustion residuals.
 - ▶ **Methodology for Evaluating Encapsulated Beneficial Uses of Coal Combustion Residuals**
 - ▶ **Coal Combustion Residual Beneficial Use Evaluation: Fly Ash Concrete and FGD Gypsum Wallboard**
 - ▶ **CCR Beneficial Use**

Unencapsulated Reuse

- ▶ Unencapsulated uses are those where coal combustion residuals are in a loose or unbound particulate or sludge form. EPA plans to develop a conceptual model for unencapsulated beneficial uses of CCRs in 2014.
- ▶ (Note - Look back to the work regarding “Guidelines for Industrial Waste Management” as a starting point for evaluating unencapsulated reusw of CCRs.

<http://www.epa.gov/waste/nonhaz/industrial/guide/index.htm>

Especially, Parts III (Protecting Surface Water) and Part IV (Protecting Ground Water Quality).

The Final Decision -- Influences

- ▶ While not finalized as of now, EPA will continue to examine information that could influence their decision to regulate CCRs under Subtitle D or go to a Subtitle C rule
- ▶ The latest is the Duke Energy Ash Spill and actions taken by the State of North Carolina regarding the spill.

Congressional Action

- ▶ The House passed a bill (H.R. 2218) and sent it on to the Senate for further review and approval.
- ▶ There are ongoing discussions occurring with the Senate regarding a Coal Ash Bill (similar to H.R. 2218). There has been discussions on additional amendments necessary to gain support to pass such legislation.

Future Actions

- ▶ The ongoing “*Need to Encourage Congress*” to Finalize a Bill that would regulate Coal Ash under Subtitle D and give the States the lead