

PENDING BEVILL REGULATORY DETERMINATION ON FOSSIL FUEL COMBUSTION BYPRODUCTS

The U. S. EPA is currently conducting studies, as required by the Bevill Amendment to the Resource Conservation and Recovery Act (“RCRA”, 42 U.S.C. §6901 et seq.), that will lead to a regulatory determination relating to fossil fuel combustion byproducts from utility and non-utility boilers using fluidized bed combustion and other combustion technologies. These studies are a continuation of EPA’s studies that were partially completed in 1993 with a regulatory determination on coal combustion byproducts from utility boilers that had limited applicability to non-utility boilers burning coal (*see 58 Federal Register 42466-424_*, August 9, 1993).

The 1993 regulatory determination was specific to the four (4) “high volume” coal combustion byproducts studied in the EPA’s 1988 Report to Congress. The determination did not address: i) utilities burning other fossil fuels or wastes from non-utility boilers burning any type of fossil fuel; ii) fluidized bed combustion wastes; and iii) co-management, co-treatment, or co-disposal of the four high volume wastes studied in the Report to Congress with other wastes generated in conjunction with the combustion of coal or other fossil fuels. These categories of waste are referred to by EPA as “remaining wastes” and are the subject of an ongoing study by EPA that will provide the factual basis for a regulatory determination, which is scheduled to be completed by April 1, 1999.

Because the 1993 regulatory determination applies only to coal combustion byproducts and not to other fossil fuels or blends of coal and fossil fuels, and is of limited scope, many commercial, institutional and industrial facilities, utilities, and independent power producers have been left without certainty as to the long term regulatory status of their combustion byproducts under RCRA. To further complicate matters, the 1993 regulatory determination specifically identified a single combustion technology, fluidized bed combustion, for additional study. The 1993 regulatory determination postponed a final determination on FBC technology using the following rationale:

...FBC is a relatively new combustion technology that allows for the removal of sulfur without an end-of-pipe scrubber. The wastes generated by his technology were not studied in the RTC [Report to Congress], and only limited information regarding their characteristics and management has been collected to date. The information that is available has not provided EPA with enough evidence to conclude that waste generated from FBC units is substantially similar to conventional boiler wastes...Because of the current lack of data, the potential of the co-firing of limestone to have a significant effect on the characteristics of the wastes produced and the potential for increased utilization of the technology, the Agency [EPA] has decided to defer a decision on these wastes until further information from the growing number of facilities can be examined...¹

¹ 58 Fed. Reg. at 42469, August 9, 1993.

The remaining wastes affect a large cross section of the United States economy and present many technically complex issues with a relatively short time for EPA to collect and analyze data and complete a regulatory determination. Accordingly, various organizations and other state and federal agencies are voluntarily cooperating with EPA to provide data and information on the remaining wastes to assist EPA in developing a factual basis for a regulatory determination. For instance, the Utilities Solid Waste Activities Group (“USWAG”) is sponsoring studies on co-management or co-disposal of high and low volume wastes, co-combustion of various fossil fuels and other opportunity fuels with coal, and characteristics and management of oil ash. The Council of Industrial Boiler Owners (“CIBO”)² created a Special Project on Non-utility Fossil Fuel Ash Classification (the “CIBO special Project”) which in turn initiated studies focused on FBC byproducts because of the ownership of FBC boilers by CIBO members. The CIBO Special Project also considered the conventional technologies (stoker and pulverized coal) used by the non-utility sector by making simple comparisons between FBC units and the conventional technologies that EPA had previously studied for the utilities.

The CIBO Special Project is operated autonomously from CIBO under its own bylaws. The purpose of the CIBO Special Project is “. . .to bring together CIBO member companies and other interested parties in a program to characterize and assess the impact of management of non-utility fossil fuel combustion byproducts. The Special Project will also evaluate the economic and environmental consequences of reclassifying combustion byproducts under the terms of a pending Beville determination by the U.S. Environmental Protection Agency under the terms of the Resource Conservation and Recovery Act.” The CIBO Special Project is an amalgamation of 38 FBC (fluidized bed combustion) and conventional technology plant owners, three (3) combustion byproduct management contractors, two (2) limestone suppliers, and one (1) boiler manufacturer who have voluntarily provided funding for this project.

The Special Project has developed an employed data collection approaches, analytical methods, and reporting conventions that closely parallel previous EPA Special Waste studies, in order to make the resulting information as relevant and accessible as possible. In the spirit of Section 8002(n) of RCRA which states “. . .the Administrator shall, as he deems appropriate, . . .invite participation by other concerned parties, including industry. . .with a view towards avoiding duplication of effort. . .”³ the Special Project consulted with the EPA to ensure that the information, data, analysis and perspectives provided would be useful in the developing the factual basis for completing the pending regulatory determination.

² The Council of Industrial Boiler Owners is a broad-based association of industrial boiler owners, architect-engineers, related equipment manufacturers, industrial byproduct managers, and university affiliates consisting of over 100 members representing 20 major industrial sectors. CIBO members have facilities located in every region and state of the country. The organization has a representative distribution of almost every type of boiler and fuel combination currently in operation. CIBO was formed in 1978 to promote the exchange of information within industry and between industry and government relating to energy and environmental equipment, technology, operations, policies, laws, and regulations affecting industrial boilers. Since its formation, CIBO has taken an active interest in the development of technically sound, reasonable, and cost-effective energy and environmental regulations for industrial boilers.

³ 42 U.S.C. §6982(n).