



Coal Combustion Residuals Legislation

Background: Coal Combustion Residuals (CCRs, commonly called coal ash) are byproducts of burning coal for generating electricity. Coal ash is used beneficially in a variety of applications including the manufacture of concrete, drywall and other construction products. With approximately forty percent of coal ash being recycled, beneficial use has become an important sector of the economy providing jobs while providing environmental benefits. Beneficial use of coal ash reduces greenhouse gas emissions, extends the life and durability of the nation's roads and bridges and reduces disposal in landfills or surface impoundments.

The question of how best to regulate coal ash under the Resource Conservation and Recovery Act (RCRA) has long been contentious for the U.S. Environmental Protection Agency (EPA). Ultimately, the EPA has determined on several occasions that coal ash should be regulated as a non-hazardous substance.

Status: On December 19, 2014, EPA issued a final regulation of coal ash, once again determining that it is not hazardous and should not be regulated as such. While NRECA supports EPA's decision to regulate coal ash as nonhazardous, the agency made clear that it will continue evaluating whether to reverse its prior decisions (dating back to the year 2000 under the Clinton Administration) that coal ash is not hazardous. Legislation is needed to codify EPA's determination that coal ash is nonhazardous to prevent this question from coming up for review every three years as set forth under current law. This would provide certainty for the regulated community, stabilize beneficial reuse markets and affirm EPA's determination that nonhazardous regulation of coal ash protects human health and the environment.

Additionally, because RCRA does not give EPA authority to directly regulate nonhazardous waste, the final rule is self-implementing, meaning that there is no state regulatory agency in charge of enforcing the rules or issuing permits. EPA has no authority to require States to implement the federal minimum criteria, and to the extent a State willingly incorporates the federal criteria into its solid waste management program, the federal rule remains in place as a parallel federal program.

The only compliance mechanism under the final rule is through RCRA citizen lawsuits. Because of that, legal disputes regarding compliance will be determined on a case-by-case basis by various federal district courts likely leading to inconsistent decisions regarding the scope and applicability of the federal rule. Regulatory agencies are better equipped to carry out compliance because they have the expertise to handle the

application of highly technical standards and the ability to ensure uniform application of the law.

Legislation is necessary to effectively implement EPA's final rule by allowing states to establish enforceable permit programs and to vest EPA with authority to administer permit programs in States with deficient programs. Doing so will make state and federal requirements consistent and place the reins of enforcement in the hands of state regulators or EPA.

NRECA Position: Please urge your Representative to co-sponsor the Improving Coal Combustion Residuals Regulation Act sponsored by Congressman David McKinley. The bill addresses the shortcomings in the final EPA rule by making permanent EPA's decision to regulate CCRs in a nonhazardous manner while providing much-needed certainty to businesses that recycle coal ash for beneficial purposes and for power plant owners and their consumers. The bipartisan legislation properly balances the interest of public health and the need of electric cooperatives to deliver affordable and reliable electricity.

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