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U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY
COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES
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Good afternoon Chairman Shimkus, Ranking Member Tonko, and members of the Subcommittee, I am Mathy Stanislaus, Assistant Administrator for the U.S. Environmental Protection Agency’s Office of Solid Waste and Emergency Response. Thank you for the opportunity to testify today about the management of Coal Combustion Residuals (CCRs) and the Subcommittee’s Discussion Draft “Improving Coal Combustion Residuals Regulation Act of 2015.”

Introduction

On December 19, 2014, EPA Administrator Gina McCarthy signed the final CCR (coal ash) rule, “Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals From Electric Utilities.” This rule establishes the first ever nationally applicable minimum criteria providing for the safe disposal of coal combustion residuals in landfills and surface impoundments.

Coal combustion residuals are byproducts of the combustion of coal at power plants, and includes fly ash, bottom ash, boiler slag, and flue gas desulfurization (FGD) materials. CCR contain contaminants such as mercury, cadmium, and arsenic which are associated with cancer and other serious health effects. When improperly managed, CCR can leak into the groundwater, blow into the air as dust, and be released to surface water and to the land in the event of a catastrophic failure.

CCR is one of the largest industrial waste streams generated in the United States. In 2012, more than 470 coal-fired electric utilities burned over 800 million tons of coal, generating approximately 110 million tons of CCR in 47 states and Puerto Rico. In 2012, approximately 40 percent of the CCR generated was beneficially used, with the remaining 60 percent disposed in surface impoundments and landfills. Of that 60 percent, approximately 80 percent was disposed in on-site disposal units. CCR disposal currently occurs at more than 310 active on-site landfills, and at more than 735 active on-site surface impoundments. These disposal units are very large, with landfills averaging more than 120 acres in size with an average depth of over 40 feet (roughly a four-story building) and surface impoundments averaging more than 50 acres in size with an average depth of 20 feet.

EPA Rulemaking

The agency is pleased that there continues to be wide agreement on the importance of ensuring the safe disposal of CCRs. As noted in my testimony before the Subcommittee on January 22 of this year, the EPA believes that the agency's rulemaking appropriately addresses the risks posed by mismanaged CCR disposal. The CCR final rule is a strong, effective, approach that provides

critical protections to communities across the nation by helping to protect our water, land, and air. The rule provides states and local communities the information they need to fully engage in the rule's implementation, thereby helping to ensure that facilities safely manage and dispose of CCR. To address the risks posed by mismanagement of CCRs, the rule requires utilities to conduct groundwater monitoring, install liners for new surface impoundments and landfills, control fugitive dust, and properly close surface impoundments and landfills no longer receiving CCRs.

The CCR rule is designed to provide electric utilities and independent power producers generating CCR with a practical approach for addressing the issue of CCR disposal and has established varying implementation timelines for the technical requirements that take into account, among other things, other upcoming regulatory actions affecting electric utilities and site specific practical realities. The rule also sets out recordkeeping and reporting requirements, including requirements to post information on a publicly available website to ensure transparency. We are committed to working closely with our state partners on rule implementation and, as a major component of this, we are encouraging states to revise their Solid Waste Management Plans (SWMPs) and submit the revisions to the EPA for approval. The EPA has been working with stakeholders on rule implementation issues and conducted a webinar in February of this year with nearly 800 participants to discuss implementation of the rule.

The EPA expects that states will use the SWMP process to help align state programs with the EPA rule, and will revise their SWMPs to demonstrate how the state intends to regulate CCR landfills and surface impoundments. In other words, the plan can demonstrate how the state

program has incorporated the rule's minimum national criteria and can highlight those areas where the state regulations meet or are more stringent than the federal minimum criteria. States are expected to have sufficient time, at least 18 months, to revise their SWMPs before key provisions of the rule take effect. The agency expects that the SWMP process can accommodate state program variability as states demonstrate their regulatory requirements are equivalent or more stringent than the requirements in the EPA rule.

The Discussion Draft

The EPA is currently reviewing the Subcommittee's discussion draft, "Improving Coal Combustion Residuals Regulation Act of 2015." The agency is open to providing technical assistance to the Subcommittee on its legislative efforts to manage the proper disposal of CCRs.

We believe that legislation should provide for a nationally uniform minimum standard that is protective of public health and the environment. We appreciate the provisions of the discussion draft that incorporate some of the components of the EPA's CCR rule. However, some additional essential elements of transparency, prevention and response that are included in the EPA's rule are critical for establishing a framework to help ensure the proper management of CCR disposal. These components include a requirement that facility compliance data and information to be posted on the internet for public access, criteria to address when a CCR unit would need to close, comprehensive structural integrity requirements, and a requirement that any releases from a CCR unit be cleaned up. We believe that these are important components for a protective CCR disposal program.

Conclusion

The EPA's final rule established nationally applicable minimum criteria for the safe disposal of coal combustion residuals in landfills and surface impoundments. The final rule represents a milestone that will help protect our communities and the environment in which we live and work. The EPA is committed to working closely with our state partners, local communities, and utilities on implementation of the rule to help protect public health and the environment. A legislative effort to establish a framework to help ensure the proper management of CCR disposal should also consider elements of prevention, response, and publicly available information/transparency.