



Resolution 08-14
Approved September 22, 2008
Branson, Missouri

As certified by
R. Steven Brown
Executive Director

THE REGULATION OF COAL COMBUSTION PRODUCTS

WHEREAS, The 1980 Bevill Amendment to the Resource Conservation and Recovery Act (RCRA) requires the U.S. Environmental Protection Agency (USEPA) to "conduct a detailed and comprehensive study and submit a report" to Congress on the "adverse effects on human health and the environment, if any, of the disposal and utilization" of fly ash, bottom ash, slag, flue gas emission control wastes, and other byproducts from the combustion of coal and other fossil fuels and "to consider actions of state and other federal agencies with a view to avoiding duplication of effort"; and

WHEREAS, USEPA conducted the comprehensive study required by the Bevill Amendment and reported its findings to Congress on March 8, 1988 and on March 31, 1999, and in both Reports that recommended that coal combustion wastes (CCW) not be regulated as hazardous waste under RCRA Subtitle C; and

WHEREAS, on August 9, 1993, USEPA published a regulatory determination that regulation of the four large volume coal combustion wastes (fly ash, bottom ash, boiler slag, and flue gas emission control waste) as hazardous waste under RCRA Subtitle C is "unwarranted"; and

WHEREAS, on May 22, 2000, USEPA published a final regulatory determination that fossil fuel combustion wastes, including coal combustion wastes, "do not warrant regulation [as hazardous waste] under Subtitle C of RCRA," and that "the regulatory infrastructure is generally in place at the state level to ensure adequate management of these wastes"; and

WHEREAS, USEPA is under no statutory obligation to promulgate federal regulations applicable to CCW disposal following the regulatory determination that hazardous waste regulation of CCW disposal is not warranted, and throughout the entire Bevill regulatory process, CCW disposal has remained a state regulatory responsibility and most of the states have developed and implemented robust regulatory programs tailored to the wide-ranging circumstances of CCW management throughout the country; and

WHEREAS, In 2005, USEPA and the U.S. Department of Energy (DOE) published a study of CCW disposal facilities constructed or expanded since 1994 and evolving state regulatory programs that found: state CCW regulatory requirements have become more stringent in recent years, the vast majority of new and expanded CCW disposal facilities have state-of-the-art environmental controls, and deviations from state regulatory requirements were being granted only on the basis of sound technical criteria; and

WHEREAS, the states have demonstrated a continuing commitment to ensure proper management of CCWs and several states have announced proposals for revising and upgrading their state CCW regulatory programs.

NOW, THEREFORE BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES:

Agrees with USEPA's assessment that CCW disposal does not warrant regulation as hazardous wastes under RCRA Subtitle C; and

Agrees with USEPA's finding in the 2005 study previously cited that "the regulatory infrastructure is generally in place at the state level to ensure adequate management of these wastes" and believes that states should continue to be the principal regulatory authority for regulating CCW as they are best suited to develop and implement CCW regulatory programs tailored to specific climate and geological conditions designed to protect human health and the environment; and

Supports safe, beneficial reuse of CCW, including for geotechnical and civil engineering purposes; and

Believes that the adoption and implementation of a federal CCW regulatory program would create an additional level of resources and oversight that is not warranted, would be duplicative of existing state regulatory programs, and require additional resources to revise or amend existing state programs to conform to new federal regulatory programs and to seek USEPA program approval; and

Therefore calls upon USEPA to conclude that additional federal CCW regulations would be duplicative of most state programs, are unnecessary, and should not be adopted, and instead, calls upon EPA to begin a collaborative dialogue with the states to develop and promote a national framework for beneficial use of CCW including use principles and guidelines, and to accelerate the development of markets for this material.