



**IDENTIFICATION AND LISTING OF SPECIAL WASTES; DISPOSAL OF COAL COMBUSTION RESIDUALS
FROM ELECTRIC UTILITIES; PROPOSED RULE**

U.S. Environmental Protection Agency
Public Hearing
Arlington, Va.

Statement of the National Mining Association
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Good morning. I am Bradford Frisby, Associate General Counsel at the National Mining Association (NMA).

NMA represents the producers of most of America's coal, metals, industrial and agricultural minerals. NMA members place coal combustion residuals, or CCRs, in their mines and otherwise beneficially use CCRs at their facilities, and are therefore very interested in this proposed rule.

NMA strongly supports EPA's preamble statement that the agency is ". . . not proposing to address the placement of CCRs in mines, or non-minefill uses of CCRs at coal mine sites in this action."

In 2006 the National Academy of Sciences (NAS) recommended that the Office of Surface Mining (OSM) and its state partners under the Surface Mining Control and Reclamation Act (SMCRA) "take the lead in developing new national standards for CCR use in mines because the framework is in place to deal with mine-related issues." NMA agrees with the NAS and urges EPA to continue to defer to OSM given its considerable expertise in mine regulation.

NMA, however, is concerned that EPA's intention to defer to OSM is not executed properly in the proposed regulatory text. For example, the definition of "minefill" in the preamble is vague and does not adequately account for non-minefill uses of CCRs, which EPA states it is not regulating under this proposal. EPA's intentions re non-minefill uses should be made explicit.

In addition, only the proposed hazardous waste regulations under Subtitle C specifically exclude "minefilling operations." No definition appears in the proposed regulations for the term "minefilling." Although we believe that EPA's intention was for other non-mine fill uses at coal mines to be exempt from EPA's rule, this point is left unclear by the text of the proposed regulation. The proposed non-hazardous waste regulations under Subtitle D should, but do not, include a similar exclusion. Furthermore, EPA's definition of "CCR landfill"—under both proposals—only expressly excludes "underground mine[s]," and thus fails to address surface mines.

To avoid significant confusion and regulatory uncertainty, EPA must make it clear in the preamble and in the final regulatory text that placement of CCRs at mines and other non-minefill uses of CCRs at underground and surface coal mines are all excluded from the rule's requirements.

NMA strongly opposes EPA's proposal to reverse the 1993 and 2000 Bevill Regulatory Determinations, which correctly concluded that CCRs should be regulated as non-hazardous wastes. Reversal of this sensible determination would threaten the CCR beneficial reuse industry and the jobs it supports with great harm if not extinction. NMA also strongly opposes listing CCRs as "special wastes" and subjecting these materials to hazardous waste regulation under Subtitle C of RCRA. A regulatory program under

Subtitle D will protect human health and the environment without erecting unnecessary barriers to the beneficial use of CCRs.

NMA strongly supports EPA's decision not to reverse the Regulatory Determination for beneficial uses of CCRs, but is concerned with EPA's discussion of unencapsulated uses, a term not well defined in the proposal. This term could be interpreted to encompass certain uses of CCRs at mine sites, contradicting EPA's stated intention not to regulate these uses under RCRA.

CCRs serve a variety of important uses at mine sites, and EPA's final rule should not put these uses in peril by failing to appropriately exclude them from the disposal regulations for surface impoundments and landfills. OSM is and should continue to be the exclusive regulator of these materials at mine sites.

NMA will submit more detailed written comments by the Nov. 19 comment deadline. Thank you.