



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

Revised March 23, 2010
Sausalito, California

As certified by
R. Steven Brown
Executive Director

THE REGULATION OF COAL COMBUSTION PRODUCTS

WHEREAS, The 1980 Beville Amendment to the Resource Conservation and Recovery Act (RCRA) requires the U.S. Environmental Protection Agency (U.S. EPA) to "conduct a detailed and comprehensive study and submit a report" to U.S. 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, U.S. EPA conducted the comprehensive study required by the Beville Amendment and reported its findings to U.S. 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, U.S. EPA 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, U.S. EPA 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, U.S. EPA 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 Beville regulatory process, CCW disposal has remained a state regulatory responsibility and 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, U.S. EPA and the U.S. Department of Energy 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 U.S. EPA's repeated assessments in 1988, 1993, 1999, 2000, and 2005 that CCW disposal does not warrant regulation as hazardous wastes under RCRA Subtitle C;

Agrees with U.S. EPA'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;

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

Believes that the adoption and implementation of a federal CCW regulatory program would create an additional level of oversight that is not warranted, duplicate 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 U.S. EPA program approval;

Believes that if U.S. EPA promulgates a federal regulatory program for state CCW waste management programs, the regulations must be developed under RCRA Subtitle D rather than RCRA Subtitle C;

Believes that designating CCW a hazardous waste under RCRA Subtitle C could create stigma and liability concerns that could impact the beneficial use of CCW; and

Therefore calls upon U.S. EPA to conclude that additional federal CCW regulations would be duplicative of most state programs, are unnecessary, and should not be adopted, but if adopted must be developed under RCRA Subtitle D rather than RCRA Subtitle C, and in addition, urges U.S. EPA to make a timely decision, and calls upon U.S. 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.