

**Testimony of Mathy Stanislaus
Assistant Administrator
Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
Before the
Subcommittee on the Environment and Economy
Committee on Energy and Commerce
United States House of Representatives**

April 14, 2011

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify today on issues regarding coal combustion residuals and H.R. 1391, the Recycling Coal Combustion Residuals Accessibility Act of 2011. My testimony also includes a brief overview of EPA's regulatory efforts associated with coal combustion residuals.

EPA'S REGULATORY HISTORY ON COAL COMUBSTION RESIDUALS

Coal combustion residuals (CCRs) are one of the largest waste streams generated in the United States with approximately 134 million tons generated in 2009. CCRs contain constituents, such as arsenic, cadmium, and mercury, which can pose threats to public health and the environment if improperly managed. Proper management of these waste streams is essential to protecting public health and the environment.

EPA has a long history of regulatory efforts regarding CCRs. Of particular note, is EPA's "Regulatory Determination on Wastes from the Combustion of Fossil Fuels" issued in May of 2000 which presented EPA's determination that CCRs did not warrant regulation as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act (or RCRA). EPA also concluded that federal regulation as a non-hazardous waste under subtitle D of RCRA was appropriate. However, EPA did not issue regulations at that time. With respect to the

beneficial use of CCRs, EPA determined that the beneficial use of CCRs did not pose a risk and did not require federal regulation. EPA also determined that the placement of CCRs in minefill operations should be regulated under subtitle D of RCRA, the Surface Mining Control and Reclamation Act (SMCRA), or both. Finally, the Agency noted in the Regulatory Determination that if additional analysis or information became available that would indicate the need for regulation under subtitle C of RCRA, that the Agency would revise the Regulatory Determination.

After the May 2000 Regulatory Determination, EPA continued to collect additional information and conduct additional analyses as part of its effort to develop regulations; including additional damage cases, risk modeling, updated information on current management practices and state regulations associated with the disposal of CCRs, petitions and a proposal from citizens and environmental groups for EPA to develop rules for the management of CCRs, and an industry voluntary agreement on how they would manage CCRs.. As a result of this new information and analyses, and how it could impact the Agency's May 2000 Regulatory Determination, EPA decided to make this information available for comment. Thus, in August 2007, EPA made much of this information available for public comment through a Notice of Data Availability. We received nearly 400 comments on the information and analyses.

The catastrophic failure of a surface impoundment retaining wall in Kingston, Tennessee in December 2008 and the resulting spill of coal ash highlighted the issue of impoundment stability. Following this incident, EPA's Administrator Jackson committed to issue regulations that would address the management of CCRs, including impoundment stability.

EPA'S PROPOSED RULE FOR COAL COMBUSTION RESIDUALS

On June 21, 2010, EPA proposed regulations for CCRs under RCRA to address the risks from the disposal of such wastes in landfills and surface impoundments generated from the combustion of coal at electric utilities and independent power producers. Because regulating CCRs raises many significant issues and because EPA wants to ensure that the ultimate decision on regulating such wastes is based on the best available data and is taken with the fullest possible extent of public input, EPA has co-proposed two alternative regulatory options, and took public comment on a wide cross-section of issues. The public comment period closed on November 19, 2010. EPA held two web sessions and eight public hearings throughout the country to provide additional opportunities to comment on the proposed rule. More than 1400 people participated in the public hearings. EPA is now reviewing more than 450,000 comments submitted during the public comment period, including information and data provided in response to the questions posed in the proposal.

Under the first regulatory alternative, EPA would reverse its May 2000 Beville¹ Regulatory Determination regarding CCRs and list these residuals, when destined for disposal in landfills or surface impoundments as “special wastes” subject to regulation under subtitle C of RCRA, which would create a comprehensive program of federally enforceable requirements. Under the second alternative, EPA would leave the Beville Regulatory Determination in place and regulate the disposal of CCRs under subtitle D of RCRA by issuing national criteria, which would be narrower in scope and would be enforced by the states and by private citizen suits.

¹ The Beville exclusion [Section 3001(b)(3)(A)(i)] of RCRA excluded certain large volume wastes generated primarily from the combustion of coal or other fossil fuels from being regulated as a hazardous waste under subtitle C of RCRA, pending completion of a Report to Congress required by Section 8002(n) of RCRA and a determination by the EPA Administrator either to promulgate regulations under RCRA subtitle C or to determine that such regulations were unwarranted.

Under both alternatives, EPA is proposing to establish dam safety requirements to address the structural integrity of surface impoundments to prevent future catastrophic releases of CCRs.

In addition, EPA has not proposed to change the May 2000 Regulatory Determination for CCRs that are beneficially used. These residuals are currently exempt from hazardous waste regulation. EPA continues to believe that the Bevill exclusion should remain in place for CCRs that are beneficially used in an environmentally-sound manner. Further, the management scenarios for these materials are very different from the risk case being considered for the disposal of CCRs in landfills and surface impoundments. EPA's proposal, however, makes clear that EPA does not consider CCRs placed in sand and gravel pits, quarries, and other large fill operations to be beneficial use. EPA views this as disposal and would regulate it under whichever regulatory option EPA finalizes.

EPA has learned a great deal regarding the beneficial use of CCRs since the May 2000 Regulatory Determination. In addition, there has been a significant increase in the reuse of CCRs, with development of commercial sectors that depend on the beneficial use of these materials. As already noted, the beneficial use of CCRs provides significant environmental benefits and new applications may provide even greater benefits, with new studies on their use being conducted. Some of this information confirms or strengthens EPA's views on the benefits of CCRs. Yet, on the other hand, some information indicates that certain uses may raise concerns and merit additional attention.

The area of beneficial use is quite complex, in that some of these uses are in an encapsulated form, while other uses are in an unencapsulated form. EPA believes that the great bulk of beneficial uses, particularly in an encapsulated form, like in concrete and wallboard, do

not raise concerns and offer important environmental benefits. However, some questions have been raised about the use of CCRs in an unencapsulated form. Thus, EPA's proposal sought additional information, and requested specific comment on certain aspects of the beneficial use of CCRs including: whether unencapsulated uses of CCRs warrant tighter controls; whether beneficial use guidance is needed to ensure protection of human health and the environment; whether further incentives could be provided to encourage beneficial use of CCRs; and seeking information and on how best to estimate current and future quantities and changes in the beneficial use of CCRs. A full list of the information on which we sought comment related to beneficial use can be found in EPA's proposal at <http://www.epa.gov/osw/nonhaz/industrial/special/fossil/ccr-rule/index.htm>.

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EPA and the Administration have no official position regarding the bill at this point. EPA supports an approach to regulation of CCRs that is based upon the best science and data, and what protects public health while continuing economic growth.

EPA will make its regulatory decision through a transparent rulemaking process based upon currently applicable law, substantive data, and the record generated from extensive public comment.

EPA acknowledges that the proposed regulatory options present challenges. However, EPA is committed to address the challenges posed under the regulatory options and to issue a rule that protects human health and the environment from the risks posed by improper management and disposal of CCRs.

CONCLUSION

EPA shares the subcommittee's goal of striking the right balance between protecting human health and the environment and providing opportunities for environmentally sound economic beneficial use of CCRs. EPA's regulatory efforts are designed to ensure that our final decision regarding the appropriate management framework for CCRs is based upon the best available information and with the fullest possible public input. Thank you for the opportunity to discuss EPA's rulemaking efforts and H.R. 1391.