

**Testimony of Lisa Feldt
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Before the
Subcommittee on Rural Development, Entrepreneurship, and Trade
Committee on Small Business
United States House of Representatives**

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Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify today on the U.S. Environmental Protection Agency's (EPA's) coal combustion residuals regulatory development activities. My testimony provides a brief overview of our regulatory proposal and some of the major issues on which we are seeking public comment, particularly as it relates to the beneficial use of 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 136 million tons generated in 2008. Of this, approximately 34% (46 million tons) are landfilled; approximately 22% (29 million tons) are disposed of in surface impoundments; approximately 37% (50 million tons) are beneficially used; and approximately 8% (11 million tons) are placed in mines. CCRs contain constituents, such as arsenic, cadmium, and mercury, which can pose threats to public health and the environment if improperly managed. Thus, proper management of these waste streams is essential to protecting public health and the environment.

EPA has a long history of regulatory efforts regarding coal combustion residuals. Of particular note, is EPA's "Regulatory Determination on Wastes from the Combustion of Fossil

Fuels,” issued in May of 2000, which conveyed EPA’s determination that coal combustion residuals 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; EPA did not issue regulations at that time. With respect to the beneficial use of coal combustion residuals, EPA determined that the beneficial use of coal combustion residuals did not pose a risk and did not require federal regulation. EPA also determined that the placement of coal combustion residuals 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 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 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 from citizens and environmental groups for EPA to develop rules for the management of CCRs, an industry voluntary agreement on how they would manage CCRs, and a proposal from environmental and citizen groups for a CCR rule. 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 this 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. While our previous regulatory actions had not addressed this particular issue, we determined that our new regulatory efforts had to be designed to prevent future catastrophic releases, as well as other types of damages associated with the disposal of coal combustion residuals in landfills and surface impoundments. After the catastrophic release of coal ash at the Tennessee Valley Authority's (TVA's) Kingston's plant, EPA's Administrator Jackson committed to issue regulations that would address the management of coal combustion residuals.

EPA'S PROPOSED RULE FOR COAL COMBUSTION RESIDUALS

On June 21, 2010, EPA proposed regulations for coal combustion residuals 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. However, because regulating coal combustion residuals raises many significant issues and because EPA wants to ensure that the ultimate decision 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 is taking comment on a wide cross-section of issues.

Under the first regulatory alternative, EPA would reverse its May 2000 Beville¹ Regulatory Determination regarding coal combustion residuals 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

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.

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 minimum criteria, which would be narrower in scope and could be enforced by the states and by private citizen suits. 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 coal combustion residuals.

In addition, EPA is not proposing to change the May 2000 Regulatory Determination for coal combustion residuals that are beneficially used. These residuals are currently exempt from hazardous waste regulation. EPA continues to believe that the Beville exclusion should remain in place for coal combustion residuals that are beneficially used in an environmentally-sound manner because of the important benefits to the economy and the environment including, for example, reduced air pollution and lower greenhouse gas emissions. In addition, the management scenarios for these materials are very different from the risk case being considered for the disposal of coal combustion residuals in surface impoundments and landfills. EPA's proposal, however, makes clear that EPA does not consider coal combustion residuals 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 coal combustion residuals since the May 2000 Regulatory Determination. In addition, there has been a significant increase in the reuse of coal combustion residuals, with development of commercial sectors that depend on the beneficial use of these materials. As already noted, the beneficial use of coal combustion residuals provides significant environmental benefits and new applications may provide even

greater benefits, with new studies on their use being conducted. Some of this confirms or strengthens EPA's views on the benefits of coal combustion residuals. 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 coal combustion residuals in an unencapsulated form. Thus, EPA's proposal is seeking additional information, and requesting specific comment on certain aspects of the beneficial use of coal combustion residuals. For example, EPA is seeking information on:

- whether unencapsulated uses of coal combustion residuals warrant tighter control and why such tighter control would be appropriate;
- whether it is necessary to better define beneficial use or provide detailed guidance on the beneficial use of coal combustion residuals to ensure protection of human health and the environment;
- whether there are incentives that could be provided that would increase and further encourage the amount of coal combustion residuals that are beneficially used; and
- information and data on the best means for estimating current and future quantities and changes in the beneficial use of CCRs.

A full list of the information we are seeking comment on 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>.

One of the issues that commenters have raised to EPA is that any regulation of the large-scale disposal of coal combustion residuals under subtitle C of RCRA will impose a stigma on their beneficial use and thus significantly curtail these beneficial uses. EPA has questioned this assertion and discussed in the preamble to the proposed rule that if subtitle C of RCRA were selected as the regulatory option, disposal of coal combustion residuals would become more expensive, and thus, beneficially using coal combustion residuals would become more attractive relative to disposal. Past experience, as discussed in EPA's proposal, suggests that increasing the costs of disposal as a result of subtitle C regulations would create a strong economic incentive for increasing diversion to beneficial uses. However, because this issue has been raised, and because EPA wants to continue to encourage the environmentally sound beneficial use of coal combustion residuals, EPA is seeking comment and data on this issue.

EPA has also taken a number of actions in the proposal that we believe would mitigate any potential for inadvertent stigma from the regulation of CCRs. First, we have proposed to retain the Bevill exclusion for beneficially used CCRs, so the regulatory status of these would remain unchanged regardless of whatever option is ultimately adopted. Second, we have proposed to identify coal combustion residuals as a "special waste" so as not to unintentionally stigmatize the beneficial use of coal combustion residuals. In addition, in our proposal, we specifically ask for comments providing suggestions or methods by which we could reduce any potential impact that might indirectly arise. We are also seeking information on actual instances

where stigma has adversely affected the beneficial use of CCRs and the causes of these adverse effects and welcome ideas on how to best estimate any potential effects for purposes of conducting regulatory impact analyses and any data or methods that would help in this effort.

CONCLUSION

The regulation of coal combustion residuals raises complex issues – from the scientific analyses to public and regulatory policy. EPA’s efforts are designed to ensure that our final decision regarding the appropriate management framework for coal combustion residuals is based on the best available information and with the fullest possible public input. Thank you for the opportunity to discuss these important issues with you today.