USWAG Update

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Coal Combustion Products (CCPs)
CCP Regulatory Background

- August 1993 & May 2000 Non-Hazardous Regulatory Determinations
- Rulemaking Schedule:
  - CCP Disposal
    - NODA August 2007
  - Mineplacement
    - OSM ANPRM March 2007
    - OSM Proposed Rule Late 2008
EPA NODA

- Issued by EPA to assess the next steps for determining whether to regulate the disposal of coal combustion wastes (“CCWs”) at the federal level
- Updating Record Since 2000 Regulatory Determination
EPA NODA

- Issued to request comment on recent studies that assessed coal combustion waste disposal
  - Joint DOE/EPA report titled *Coal Combustion Waste Management at Landfills and Surface Impoundments, 1994-2004*
  - EPA’s Risk Assessment on the management of CCWs in landfills and surface impoundments
  - EPA’s damage case assessment
EPA NODA

- The NODA also made available and invited comments on:
  - USWAG’s CCP Action Plan
  - A petition for rulemaking submitted by environmental activist groups to prohibit the placement or disposal of CCW into groundwater and surface water
  - A framework for federal regulation of CCW disposal in landfills and surface impoundments submitted by other environmental activists.
Earthjustice Proposed Regulations

- Essentially federalizes ash disposal, ignoring states’ activities & role in RCRA Subtitle D
- Covers active and closed disposal units
- Groundwater protection point of compliance 50 m from unit boundary
- Prohibits new/expanded surface impoundments; existing units must closed within 2 years
- Beneficial uses except in product (e.g., cement/concrete, wallboard) regulated same as disposal
- Suggests hazardous waste listing for noncompliance
Earthjustice Regulations – Our View

- Unsupported by data collected by EPA
- Scope exceeds any RCRA Subtitle D regulations
- Targets areas of ash management not identified by EPA in 2000 Regulatory Determination as concern
- Maintains myth that no Federal regulation = no regulation
- Regulation of beneficial use would hinder utilization efforts
CCP Disposal Regulations – Our View

- Action Plan & State Regulations are Sufficient
- No Need for Comprehensive Federal Regulatory Program
  - Performance Based Standards for Disposal and Mineplacement
  - State Regulatory Oversight of Disposal
  - No Regulation of Beneficial Use
  - EPA’s Role = Technical Assistance & Filling Gaps
CCP Disposal Regulations – Environmentalists’ View

- “Contingent C” regulatory approach
- States cannot be trusted
- Only federal regulations can ensure CCPs are not mis-managed
- Industry cannot be trusted to implement voluntary plan
CCP Disposal Regulations – States’ View

- “The need for additional federal regulations is questioned (ASTSWMO)
- “The department believes that any additional federal regulation of these wastes is unnecessary” (Nebraska DEQ)
- “If federal rulemaking for CCW is necessary, we suggest … MSW landfill regulatory structure in Part 258 of Subtitle D of RCRA” (Wisconsin DNR)
CCP Disposal Regulations – States’ View

- ECOS Resolution on Regulation of CCPs
  - Agrees CCPs should not be regulated as hazardous waste
  - Confirms States are and should remain the principal regulatory authority
  - Calls on EPA to NOT develop federal disposal regulations; and
  - Calls for dialog between EPA and States to encourage beneficial use
CCP Mineplacement

- OSM Implementation of NAS Report on Mineplacement
  - SMCRA Does Not Contain Explicit Regulations Addressing CCP Mineplacement
  - Proposed Modifications to SMCRA Title V & IV
  - Demonstrates OSM Commitment to Mine Reclamation & Environmental Protection
  - Will Allow for Continued CCP Mineplacement
CCP Mineplacement

- Environmental Groups have requested
  - Separate NODA on Mineplacement
  - Risk Assessment on Mineplacement
  - Mineplacement Damage Case Assessment
- OSM is preparing EIA on proposed rule
- Proposed Rule – Late 2008
- EPA likely to develop rule for non-SMCRA mineplacement
What Does the Future Hold?
State Level Activities

- Assertion by States of Regulatory Authority
  - ECOS, ASTSWMO Letters to EPA
- Revisions to State Regulations
  - Iowa, Maryland (Disposal & Utilization), Ohio (Solid Waste Rules), Pennsylvania, Virginia
- Citizen Suits
  - Sierra Club challenge to Kansas Disposal Permit
  - Environmental Integrity Project notice of intent to sue re. CCP disposal in Maryland
What Does the Future Hold?
Federal Activities

- EPA Disposal Regulations
- OSM Mineplacement Regulations
- EPA Mineplacement Regulations
- Congressional Oversight
- Effluent Guideline Revisions
- ORD Studies on Hg Control & CCPs
Spill Prevention Control and Countermeasures (SPCC)
SPCC

- Intended to address SPCC issues that arose after the 2002 rulemaking that had not yet been addressed
- Final rule scheduled for October 2008
- Deadline for compliance with 2002 (and future) rules is still July 1, 2009*
SPCC
Key Loose Ends Proposals

- Minimal SPCC plan template for facilities with less than 5,000 gallons of oil storage capacity
- Expansion of mobile refueler exemption from sized secondary containment to cover trucks used to transfer non-fuel oils
- Definition of loading rack that would trigger sized secondary containment requirements
SPCC
Key Loose Ends Proposals

- Codification of guidance that active containment measures may satisfy secondary containment standards
- Clarification of the rule’s application to wind turbines
- Codification of flexibility in defining “facility” for program applicability
- Elimination of dual regulation of EDG Tanks at Nuclear Power Plants
USWAG comments generally supported most of EPA’s proposals except its definition of loading rack.

- Most of the proposals would dramatically reduce compliance burdens.
- Possible USWAG Workshop Late 2008/Early 2009?
Treated Wood Issues
Treated Wood Issues

- Draft Risk Information for Heavy-duty Preservatives (CCA, Creosote, Penta) Published April 16, 2008
- REDs Published September 2008 – CCA, Creosote, Penta eligible for re-registration
- Next Step: Registration Review
- Environmentalists’ Petition re Disposal
- EPA Looking at Secondary Use?
PCB Regulations
PCB Issues

- PCB Phase-Down Initiatives
  - International Treaties
  - Environment Canada Regulations
  - Mandatory vs. Voluntary Efforts
- EPA’s 2009 – 2001 Strategic Plan
  - PCBs in Caulk, Pipelines
- PCB Remediation Waste Disposal
- PCB Workshop – November 19 – 20, 2008 in Memphis
Questions?

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