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## **Client Alert**

### **Update of EPA Proposal to Regulate Coal Combustion Residuals**

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EPA announced on May 4 that it is proposing to regulate coal combustion residuals and is proposing two alternative regulations for public comment. There will be a 90 day public comment period following publication in the Federal Register, which should appear soon. Mark your calendars to comment by early August 2010.

Under the first proposal, EPA would reverse its August 1993 and May 2000 Beville Regulatory Determinations that coal combustion residuals ("CCRs") are not a hazardous waste and would list CCRs as special wastes subject to hazardous waste regulation under subtitle C of RCRA. Under the second proposal, EPA would regulate disposal of CCRs under subtitle D of RCRA by issuing national minimum criteria. Under both alternatives EPA is proposing to establish dam safety requirements to address the structural integrity of surface impoundments to prevent catastrophic releases.

EPA is not proposing to change the May 2000 Regulatory Determination for beneficially used CCRs, which are currently exempt from the hazardous waste regulations under Section 3001(b)(3)(A) of RCRA. However, EPA is clarifying this determination and seeking comment on potential refinements for certain beneficial uses.

EPA is also not proposing to address the placement of CCRs in mines, or non-minefill uses of CCRs at coal mine sites in this action, but will coordinate with the Office of the Interior's Surface Coal Mining and Reclamation Program to jointly propose those changes.

EPA is specifically seeking comment on three topics to aid it in deciding which route to go. First, EPA is seeking comment on the extent of existing damage cases, the extent of the risks posed by the mismanagement of CCRs, and the adequacy of state programs to ensure proper management of CCRs.

Second, EPA requests states and others to provide further information on state programs, including the prevalence of groundwater monitoring at existing facilities and why state programs may address groundwater monitoring and risks differently for surface impoundments located proximate to rivers.

Third, EPA is requesting public comment on the exact locations of CCR waste management units so that the Agency can more fully account for water bodies that may exist between a waste management unit and a drinking water well.

If regulated under the hazardous waste Subtitle C program, CCRs would be regulated from the point of their generation to the point of their final disposition, including during and after closure of any disposal unit. This would include the generator and transporter requirements and the requirements for facilities managing CCRs, such as siting, liners, run-on and run-off controls, groundwater monitoring, fugitive dust controls, financial assurance, corrective action, including facility-wide corrective action, closure of units, and post-closure care. In addition, facilities that dispose of, treat, or store CCRs would be required to obtain permits for the units in which such materials are disposed, treated, and stored. The rule would also regulate the disposal of CCRs in sand and gravel pits, quarries, and other large fill operations as a landfill.

If regulated under Subtitle D, EPA would establish national criteria to ensure the safe disposal of CCRs in these units. The units would be subject to, location standards, composite liner requirements (new landfills and surface impoundments would require composite liners; existing surface impoundments without liners would have to retrofit within five years, or cease receiving CCRs and close); groundwater monitoring and corrective action standards for releases from the unit; closure and post-closure care requirements; and requirements to address the stability of surface impoundments and possibly requiring financial assurance. The rule would also regulate the disposal of CCRs in sand and gravel pits, quarries, and other large fill operations as a landfill. The rule would not regulate the generation, storage or treatment of CCRs prior to disposal. The rule would not require permits, nor could EPA enforce the requirements. Instead, states or citizens could enforce the requirements under RCRA citizen suit authority; the states could also enforce any state regulation under their independent state enforcement authority.

For more information go to [www.EPA.gov/coalashrule](http://www.EPA.gov/coalashrule).