August 18, 2010

Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals from Electric Utilities Docket
U.S. Environmental Protection Agency
Mailcode: 5305T
1200 Pennsylvania Ave., NW
Washington, DC 20460


Dear Sir/Madam:

The Waste Committee of the Environmental Council of the States (ECOS) respectfully requests a 120-day extension of the comment period for EPA’s proposed rulemaking for the Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes: Disposal of Coal Combustion Residuals from Electric Utilities (“CCR Rule”).

The members of ECOS are responsible for ensuring that their state environmental programs are operated in an effective and efficient manner. Doing so requires that their programs have adequate resources. Consequently, they have a significant interest in rules proposed by the U.S. Environmental Protection Agency (EPA) that may have substantial impacts on their programs and resources. Our members are particularly concerned about EPA’s proposed CCR rule, which will have significant and far-reaching implications.

REACHING CONSENSUS AMONG STATE PARTNERS

As members of their Governors’ cabinets, it is incumbent upon our members to ensure that their policies and public comments are consistent with those of all arms of state government. The CCR rule reaches into the purview of many other programs and authorities. For example:

- State Legislatures - The proposed definition of the term “special waste” in the Subtitle C option conflicts with existing state statutory definitions of “special waste” as a type of non-hazardous waste. For example, in Arizona’s Solid Waste Management statute, “special waste” means a solid waste as defined in section 49–701.01, other than a hazardous waste, which requires special handling and management to protect public health or the environment. (AZ Rev Stat § 49-851.A.5). Before commenting on that aspect of the rule, our members will have to consult with their state legislators.
• State Waste Management – Regardless of whether the Subtitle C or Subtitle D approach is adopted by EPA, there will be significant effects on state waste management programs. States need time to assess the adequacy of their hazardous waste programs to manage this work and identify programmatic shortfalls should Subtitle C rules be adopted. Furthermore, should EPA propose the more logical Subtitle D approach, state programs need to assess their solid waste program capability to oversee the resulting work.

• State Beneficial Use Programs – These rules will have a significant effect on the ability of state beneficial use programs to utilize CCR industrial byproducts in commercial products as well as the diversion of these materials from landfills. In Wisconsin, for instance, the state has a beneficial use program that allows for use of certain coal ash residuals in a manner that is protective of human health and the environment and reduces the need for landfills. These materials. It is likely the stigma of having these materials regulated as a special waste under RCRA subtitle C will exacerbate this problem.

• State Highway Departments – Construction of highways is more economical and structurally sound using cement made with fly ash. Designating fly ash as a hazardous waste could have substantial adverse consequences on state highway budgets that, like most state programs, are stretched to the limit. It is essential that our members’ comments about the impact of the Subtitle C option on beneficial use accurately address their counterparts in state highway programs.

• State Dam Safety Programs – The proposal delves into regulation of dam safety, which is typically the purview of state programs that are distinct from waste management programs. The proposal includes requirements for dam safety and stability for impoundments, such as design and inspection requirements. It is essential that our members consult with their dam safety officials to ensure that their comments are not in conflict with state rules and practices.

• State Water Programs – EPA requests comments regarding the alternate use of NPDES permits rather than the development of RCRA regulations to address dam safety and structural integrity. The response to this question involves coordinating a response from two distinct programs (water and waste) concerning an issue that neither program has the expertise to address. Ensuring that the programs do not offer conflicting opinions will require both education and coordination.

**Program Resources**

The need for a state response to this rule comes at a time when state resources are stretched to the limit. While input from state RCRA programs and waste management programs is essential because of the unprecedented impact that a hazardous waste classification will have on their programs, all states have experienced a perilous depletion of resources. Federal funding of state RCRA programs has not even kept pace with inflation even though the programs have simultaneously become more complex. The federal reporting requirements alone are an enormous burden. States, both small and large, are suffering from a devastating loss of resources. For example:
• In New Hampshire, an example of a smaller state, the $300K federal support received in 1992 would be at least $792K in 2010 dollars with inflation. Yet New Hampshire received only $430K for a program that has grown in complexity over the last 20 years.

• In New York, with a population of nearly 20 million people, the staff in the hazardous waste program in 2010 is half of what it was in 1992. Numerous near-term retirements will reduce not only the number of staff, but also the expertise that the retirees will take with them.

As a result, this proposed rulemaking comes at a time when states have limited resources available to properly evaluate the proposals, which necessitates additional time to properly assess them.

• The comment period coincides with the final months of the federal fiscal year, when states are in the throes of finishing work on grant commitments to ensure that strategic programmatic goals, including grant commitments and GPRA goals, are met by the end of the reporting cycle in September. Given the resource losses that states have endured in recent years as a result of the economic downturn, the personnel needed to accomplish the programmatic goals and GPRA targets are often the same personnel who provide the detailed analysis of major new rule proposals such as the CCR Rule. Both of these activities are of critical importance to state programs, and it is important to give each of these priorities the attention and the resources needed. An extension of the comment period beyond the end of the FY2010 would help ease this resource conflict.

• The publication of this proposal also coincides with the comment period for the Identification of Non-Hazardous Secondary Materials That Are Solid Waste proposed rule (75 FR 31843), which will also have significant impacts on state waste programs. Many of our members who have been deeply involved in the analysis of this proposed rule are indispensable to the analysis of the CCR rule. In essence, with the comment period for that proposal ending on August 3, 2010, they will have less than two months to respond to the CCR proposal unless an extension is granted.

The decision about federal regulation of CCR will have far-reaching impacts on state environmental programs and consequently the citizens of our states. It is imperative that our members have the opportunity to not only properly assess the rule, but also to ensure that our colleagues are in agreement with our positions. This can only be achieved if the comment period is extended by 120 days.

Please do not hesitate to contact me (785-296-1535) or ECOS Executive Director Steve Brown (202-624-3667) if you have any questions or need any additional information.

Sincerely,

[Signature]

John W. Mitchell
Chair, ECOS Waste Committee
Director, Division of Environment,
Kansas Department of Health and Environment