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July 16, 2020

RCRA Docket (via regulations.gov)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

RE: Docket ID No. EPA-HQ-OLEM-2019-0361

Dear Sir/Madam:

The Solid Waste Disposal and Conversion Task Force within the Materials Management Subcommittee of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) appreciates the opportunity to provide comments on the U.S. Environmental Protection Agency (EPA) proposed rule, Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Federal CCR Permit Program, published in the Federal Register on February 20, 2020 (85 FR 9940). These comments have not been reviewed or adopted by the ASTSWMO Board of Directors. In addition, individual State or Territorial solid waste programs may also provide comments based on their own perspectives and experiences.

ASTSWMO is an association representing the waste management and remediation programs of the 50 States, five Territories and the District of Columbia (States). Our membership includes State waste program experts in the management and regulation of solid and hazardous waste, as well as coal combustion residuals (CCR).

The ASTSWMO Solid Waste Disposal and Conversion Task Force (Task Force) recently surveyed States regarding their plans to adopt and seek EPA approval of a State CCR permit program as authorized under the 2016 Water Infrastructure Improvements for the Nation (WIIN) Act. In that survey, the Task Force requested feedback from States on concerns regarding their State actions to obtain EPA approval for a partial or full State CCR permitting program. States provided the following concerns in light of the proposed Federal CCR Permit Program:

1. States are concerned with the timing and implementation of the Federal CCR permit program. The proposed rule outlines that EPA's permit program will only apply to CCR units located in nonparticipating States or in Indian country. As included in the definition of nonparticipating States in the WIIN Act and used in this rule proposal, it appears that States that wish to implement a State permitting program (i.e., become a participating State) will either (i) need to have an EPA approved State permit program or (ii) have submitted evidence to operate a State permit program prior to the proposed federal permit application deadlines (first tier permit application deadline is within 18 months after the effective date of the final rule). This effectively places a deadline on States to pursue their own regulatory actions and prepare and submit applications for CCR permit program approval prior to this date.

This concern is amplified as States are uncertain of the outcome of the recently proposed amendments to the 2015 CCR Rule that have not yet been finalized, including the most recent proposed rule titled

Holistic Approach to Closure Part B (85 FR 12478). States are concerned about possible future litigation as the proposed rules become final, and some States are waiting for there to be certainty in the CCR rule before taking regulatory actions in their States.

2. Some States also indicated a desire for implementing their own State flexibilities within their CCR permit program. This comes with some concern as the preamble (85 FR page 9949) states, “For any subpart D requirements not covered by the approved state program, the state is considered a nonparticipating state and the owner and operator of such CCR units would be required to apply for and obtain a federal CCR permit.” States are concerned with this approach, and the possibility of a dual-permit authority when a State may establish a CCR permitting program for one or more CCR unit types that does not incorporate all requirements (especially those requirements that are not yet final) and EPA is insisting on a permit addressing the unincorporated requirements from CCR units in partially-approved participating States.
3. While it is clear that the proposed Federal CCR permit program has no bearing on the structure of State permitting programs, there is concern that the Federal CCR permitting program, once finalized, may be viewed as minimum criteria, impacting EPA approval of individual State CCR permit programs.
4. And finally, for States that are not pursuing a CCR permit program, the Task Force received feedback that a permit-by-rule is an inadequate permit mechanism for CCR landfills given the complexity of landfill design and operation. EPA should consider feedback from these States regarding the suitability of the proposed permit-by-rule, especially in comparison to existing permit requirements for both MSW and Hazardous Waste Landfills (typically a Part A and Part B process addressing siting and design, operation, monitoring, closure, and post-closure care).

In addition to these comments, the Task Force requests that EPA also update the [Interim Final CCR State Permit Program Guidance Document](#) dated August 2017 to assist States with development of their State permit programs. The update should include changes to the State checklist based on vacatur required by the D.C. Circuit Court of Appeals decision in the case of *Utility Solid Waste Activities Group, et al. v. EPA* (USWAG) on August 21, 2018, and changes effective August 29, 2018 in the CCR Rule Phase One Part One Amendment. The guidance should continue to be updated as the proposed CCR Rule amendments are finalized, which will assist States by providing current information and ensure consistency in submittals.

The Solid Waste Disposal and Conversion Task Force within the Materials Management Subcommittee of ASTSWMO appreciates the opportunity to work with EPA on this proposed rule, and looks forward to providing additional input on future CCR rulemakings.

Sincerely,



Kathryn Perszyk (VA), Chair
Solid Waste Disposal and Conversion Task Force
ASTSWMO Materials Management Subcommittee