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July 17, 2023

U.S. Environmental Protection Agency
EPA Docket Center
Office of Land and Emergency Management (OLEM) Docket
Mail Code 28221T
1200 Pennsylvania Avenue, NW
Washington D.C. 20460

via regulations.gov

RE: Docket ID No. EPA-HQ-OLEM-2020-0107

Dear Sir or Madam:

The 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 regarding the U.S. Environmental Protection Agency's (EPA) Proposed Rule, Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Legacy CCR Surface Impoundments, published in the Federal Register on May 18, 2023 at 88 FR 31982 (hereafter referred to as the "proposed rule"). These comments have not been reviewed or adopted by the ASTSWMO Board of Directors. In addition, individual State or Territorial (State) 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 program experts who manage State-run solid waste permitting programs as well as coal combustion residuals (CCR) programs.

In ASTSWMO's [2023 Statement on Coal Combustion Residuals Program Implementation](#), ASTSWMO urged EPA to take the necessary steps to finalize the remaining CCR regulations as expeditiously as possible to enable States to receive full CCR permit program approval. ASTSWMO recognizes this proposed rule is one step of many as EPA works to fully implement the CCR program.

Timeframe for Comments on EPA's Proposal

The ASTSWMO Disposal and Conversion Task Force (Task Force) supports EPA's development of rules for Legacy CCR Surface Impoundments and Coal Combustion Residuals Management Units (CCRMUs), considering the August 21, 2018, opinion by the U.S. Court of Appeals for the District of Columbia

Circuit in *Utility Solid Waste Activities Group, et al. v. EPA* that vacated and remanded the exemption for inactive surface impoundments at inactive power plants from regulation. The Task Force notes that there are currently several important proposed EPA regulatory actions that coincide with this public comment period. Additionally, State solid waste programs are working on Solid Waste Infrastructure for Recycling (SWIFR) grants and CCR grant applications and final paperwork. These concurrent activities have affected the ability of solid waste programs and State agencies overall to provide in-depth comments.

Effect on State CCR Permit Programs

EPA requested comment on the effect of the proposed rule on State CCR permit programs. The proposed rule does not account for current State permitting requirements. EPA noted in the preamble that the duplicative State and federal requirements are most appropriately addressed through the Congressionally mandated process in RCRA section 4005(d) (i.e., the State permit program approval process), under which a State can seek approval to operate its permit program in lieu of the federal program, rather than in this rulemaking. The State permit program approval process is taking years to complete, with only three States obtaining partial State permit program approval and only one approval granted since 2020. The Task Force is aware of four States that have submitted applications since 2020, and EPA notes several others in progress with rules and program development. Given the timeframe for EPA's review and approval of State permit programs, it is impossible for a State to show their existing regulations are as stringent as the proposed rule before it becomes effective. Although the preamble discusses how EPA determined the appropriate timeframes for compliance with the proposed rule, there is no discussion on the impact of existing State regulations on the timeframes for compliance.

Additionally, many areas EPA is now defining as legacy units and CCRMUs were closed in accordance with local, State, and federal requirements at the time of closure. The proposed rule as written may require State agencies to reconsider past CCR unit closure permits or decisions, creating resource issues for solid waste programs. The Task Force suggests EPA work with States to better understand the current landscape of State regulations for these facilities and how best to address the concerns in rule rather than through the lengthy State permit program approval process.

Regulatory Definition of Liquids

EPA requested comments on whether it would be useful to include a regulatory definition of liquids. The Task Force is concerned with the inconsistent use of the term liquids in the proposed rule as compared to the rest of Subtitle D. The municipal solid waste landfill rules at 40 CFR §258.28 define the term "liquid waste" to mean any waste material that is determined to contain "free liquids" as defined by Method 9095B (Paint Filter Liquids Test). CCR is also regulated under Subtitle D and, therefore, terminology and definitions should be consistent between 40 CFR §257 and 40 CFR §258. The Task Force recommends EPA define the term liquids in the rule, and be consistent with 40 CFR §258.28. Additionally, we encourage EPA to look at State Subtitle D programs for definitions of the term liquids.

Identification of CCRMUs

The preamble of the proposed rule discusses the resources to be used to identify CCRMUs and includes, but is not limited to, operating records, aerial photography, construction or inspection reports,

groundwater monitoring data, regulatory agency records and interviews with State and local officials, and current and former employee interviews. Any requirements to interview State and local officials will place a significant strain on State agencies during the nine-month period in which CCRMUs are required to be identified. In addition to the burden of time, requiring interviews with State officials to confirm the presence or absence of CCRMUs could put State regulators in the difficult position of verifying compliance on behalf of EPA without receiving State permit program approval first. The implementation of the term “not limited to” in the proposed regulations is unclear. The Task Force recommends that for all occasions in the proposed rule where “not limited to” is used that EPA draft a guidance document for the implementation of these requirements. Additionally, the draft guidance should be made available for public comment prior to being finalized by EPA.

Beneficial Use of CCR

On August 19, 2019, EPA proposed federal regulations for Enhancing Public Access to Information and Reconsideration of Beneficial Use Criteria and Piles. Additionally, ASTSWMO’s 2023 Statement on Coal Combustion Residuals Program Implementation urged EPA to provide guidance on the beneficial uses of CCR. Recently, the U.S. Department of Energy launched a \$140 million program to design, construct and operate a new facility to demonstrate the commercial feasibility of a full-scale rare earth elements and critical mineral extraction and separation refinery, using unconventional resources such as coal ash. The proposed rule does not take into consideration the future excavation or mining of CCR from closed units for beneficial use. The Task Force encourages EPA’s Office of Resource Conservation and Recovery to work with the Department of Energy to ensure that the beneficial use of coal ash is available even after closure.

CCRMU Definition

The CCRMU definition as proposed is too broad and does not account for the beneficial use of CCRs as discussed on page 32018 of the preamble. CCRs have many valuable beneficial uses both at the facility and off-site. Owners and operators of coal fired power plants should be able to utilize CCR for its beneficial uses. States currently have, and had prior to federal regulation, the authority to approve the beneficial use of coal ash at the facility and off-site. The broad nature of the CCRMU definition creates the need for previously approved beneficial uses to be reexamined for potential regulation under the proposed rule, adding a resource burden on State agencies. Therefore, the Task Force recommends EPA revise the definition of CCRMU, to exclude any beneficial use as defined by 40 CFR § 257.53 or as previously approved by State agencies.

The ASTSWMO Disposal and Conversion Task Force appreciates EPA’s efforts to address legacy CCR impoundments and CCRMUs, and we look forward to future collaboration with EPA on CCR regulations. If you have any questions about these comments, please contact me at (307) 777-3501 or jody.weikart@wyo.gov.

Always,



Jody Weikart (WY), Chair
Disposal and Conversion Task Force
ASTSWMO Materials Management Subcommittee