Association of State and Territorial
ASTSWMO
Solid Waste Management Officials

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August 3, 2010

Identification and Listing of Special Wastes; Disposal of
Coal Combustion Residuals from Electric Utilities Docket
Attention Docket ID No., EPA–HQ–RCRA–2009–0640
Environmental Protection Agency
Mailcode: 5305T
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: Request for Extension of the Comment Period for the proposed rule for *Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals from Electric Utilities* (Docket ID # EPA HQ-RCRA-2009-0640)

Dear Madam/Sir:

The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) 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*.

The content of the proposed rule is of significant concern to our members, who are responsible for State solid and hazardous waste management programs, including environmental remediation, recycling, and beneficial use. When the Environmental Protection Agency (EPA) announced its fast-track regulatory schedule for coal combustion residuals (CCR) in January 2009, the ASTSWMO Board of Directors immediately appointed a CCR Ad Hoc Workgroup (Workgroup). In August 2009, the Workgroup distributed a survey concerning the regulation of CCR to ASTSWMO members. All 50 States and the District of Columbia responded to the survey. A survey response of 100 percent is highly unusual and demonstrates how important this issue is for State waste programs.

ASTSWMO's members are the nation's experts in waste management regulation and program implementation. As demonstrated in this letter, it is not possible for our members to provide the kind of response this proposal demands within the time constraints of the initial 90 day comment period. Significant benefits will be gained by granting an extension of the comment period. The extension will provide EPA with the opportunity to incorporate State comments on issues that are vital to EPA's analysis of the options in the proposal. On the other hand, it is difficult to conceive any benefit in denying a request to extend the comment period for a rule with such far-reaching implications. Without a thorough analysis and response to the questions raised in the proposal, a final determination will not be fully informed. Following are just a few of the reasons that a 120 day extension of the comment period is necessary.

SCOPE OF THE RULE

- Two Separate Rulemaking Proposals -The proposed rule, which encompasses essentially two separate rulemaking proposals with multiple sub-options, is very lengthy and requires a complex analysis. While some other responding entities may have sufficient resources to focus almost exclusively on commenting on the proposed rules, State experts who will analyze and evaluate the impacts of the proposal are also responsible for the waste management programs that protect human health and the environment. Requiring State regulators, who are already overburdened, to perform an analysis under such tight time constraints will not only be burdensome, but could present a dilemma in which they must decide which responsibility is most imperative.

- Numerous Information Requests - EPA has requested information on 64 specific items. There are at least 45 requests that are relevant to States, many of which require significant research and resources in order to provide thorough responses. One example is the request for:

  > [D]etailed information on current and past individual state regulatory and non-regulatory approaches taken to ensure the safe management of CCRs, not only under state waste authorities, but under other authorities as well, including the implementation of those approaches.

  Responding to this particular request will not only require States to compile information about the complexities of their regulatory programs, but they will also have to research and provide information about past practices. It could take weeks to finish assembling and compiling responses to this one information request alone. This particular information request is only one of many that are vital to a proper evaluation of the proposal.

- Survey of the States - ASTSWMO is preparing to conduct a survey of the States requesting information on some of the most pertinent issues of each proposal. Designing the survey, a critical step, in itself is taking a significant amount of time. Once the survey is disseminated, time will be needed to collect, compile and present the results. In exchange for granting the requested extension of time, EPA could benefit from an informative collective response from the States on some of the most vital issues.

- New Category of Waste - Among the many complexities of the rule is the introduction of a new category of regulated hazardous waste called "special waste." Only State regulators can appreciate and explain the ramifications of introducing a new hazardous waste classification system involving high-volume, lower toxicity waste.

- Disposal Capacity - The vast majority of States have indicated that they do not have sufficient permitted Subtitle C disposal capacity for the CCR generated in their States. In addition to individual State concerns, the national hazardous waste disposal capacity is in jeopardy if the Subtitle C option is chosen. Even using the conservative assumptions that beneficial use will continue at its current rate *and* half of the coal fired utilities will seek Subtitle C permits for on-site disposal facilities, EPA's expected maximum capacity for Subtitle C landfill capacity for 2013 will be consumed in less than one year. This is an issue of vital concern to both the citizens and waste management officials of the States. Evaluating the disposal options and the resources that will be needed to issue permits for new facilities is no small task. Because of the magnitude of this problem, time must be allowed for States to incorporate this research in their comments.

STATE RESOURCE CONSTRAINTS

The need for a State response to this rule comes at a time when State resources are stretched to the limit. For example, input from State RCRA 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 while 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 M people, the staff in the hazardous waste program in 2010 is ***half*** of what it was in 1992. Numerous retirements expected in the next couple of months 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.

NEED TO COORDINATE WITH OTHER STATE PARTNERS

ASTSWMO has identified several other entities in State government whose programs will be impacted by provisions in the proposed rule. It would be negligent and possibly damaging to respond in a way that would be contrary to the interests of any other State government entity. Such conflict can only be avoided by identifying and coordinating with the other parts of State government that may be affected by this rule.

- State Legislatures - Many States already have a definition in their solid waste management statutes of "special waste" for categories of non-hazardous waste. For example see Arizona Revised Statutes, Title 49, Chapter 4, Article 9, 49-851 A.5. - "Special waste" means a solid waste as defined in section 49-701.01, other than a hazardous waste ... Before commenting on that aspect of the rule, our members will have to consult with their State Legislators.

- 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 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 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. State waste and water programs will have to carefully consider the response to this question. It would not be informative, and could be counterproductive, if the programs offer conflicting opinions.

The decision about federal regulation of CCR will have far-reaching impacts on the citizens of this country. It is imperative that the nation's waste management experts from State waste programs have the opportunity to provide thoughtful and comprehensive comments on the proposed rule. This can only be achieved if the comment period is extended by 120 days.

Please do not hesitate to contact me (303-692-3338) or ASTSWMO Executive Director Mary Zdanowicz (202-624-5351) if you have any questions or need any additional information.

Sincerely,

Gary Baughman (CO)
ASTSWMO President