

# ARMA HSE Committee

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## **COAL ASH REGULATORY AND LEGISLATIVE DEVELOPMENTS**

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# Overview

- No very significant developments since presentation at last year's webinar
- Coal ash also known as coal combustion residuals (CCRs)
- Legislative action (and inaction)
  - Once again, House passes coal ash legislation
  - Once again, Senate probably will not
- EPA continues to stall in rulemaking

# EPA Proposal to Regulate

- 2 basic options Under June 2010 proposal
- 1<sup>st</sup> Option – Regulate under RCRA Subtitle C, the hazardous waste subtitle
  - Would be regulated as a special waste
- 2<sup>nd</sup> Option – Regulate under RCRA Subtitle D, for nonhazardous waste
  - Discretion to states
  - EPA guidelines

# ARMA Comments on Proposal

- Discussed use of coal ash in roofing materials
  - Considered to be a “beneficial use” by EPA
- Emphasized that Subtitle C regulation would stigmatize roofing materials
  - Even though technically would not be a hazardous waste under this option
- Opposed regulation under Subtitle C
  - Many other industries did the same

# EPA's Continued Stall in Rulemaking

- Over 3 years since proposal
- Delay for several reasons
  - Number of comments received
  - Gathering of additional data
  - Controversial nature of rulemaking
- No real indication from EPA on when it plans to issue a final rule

# Lawsuits to Require EPA to Issue Final Rule in Timely Fashion

- 2 groups have sued to force EPA to issue final rule before long
  - Environmentalists
  - Coal ash recyclers
- In 2012 environmentalists asked court to require EPA to issue rule within 6 months
  - Recyclers asked for 3 months
- No ruling by federal district court

# EPA's Latest Action in Rulemaking

- In July, EPA issued a “Notice of Data Availability” (NODA) to solicit public comment on additional data that could affect its regulatory impact analysis and risk assessment, its definition of large-scale fill operations, and additional data on surface impoundment structural integrity assessments.

# Previous Congressional Action

- Congressional efforts to limit EPA's authority to regulate
  - Led by Republicans but also some support from Democrats (mostly from coal states)
  - Success in House but blocked by Senate
- 2012 – House version of transportation bill limited EPA's authority
  - Originally seemed Conference Committee would include coal ash provision in bill
  - In the end, Senate refused to go along

# 2013 Congressional Action

- On July 25<sup>th</sup>, House passed H.R. 2218
  - Not as far-reaching in limiting EPA as Republican-backed coal ash legislation passed by House in previous years
  - Scaled back in hope of gaining bipartisan support for Senate approval
- Passage in Senate still unlikely
  - Leading Democrats opposed
  - Sen. John Hoeven (R-ND), leading proponent in Senate, seems pessimistic

# Where Now?

- Continued uncertainty over EPA action
  - Agency continues to resist requests for prediction on timing
  - Should coordinate coal ash rule with effluent limitation guidelines rule for power plants
- Legislation unlikely in this Congress
  - Even with support from coal state Democratic senators
  - Unlikely that proponents can garner 60 votes