



June 3, 2014

Mr. Mathy Stanislaus
Assistant Administrator
Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Coal Combustion Residuals Rulemaking

Dear Mr. Stanislaus:

As U.S. EPA moves forward in finalizing its rule on the management of coal combustion residuals (CCRs), we would like to convey our concerns with an implementation issue regarding the proposed RCRA Subtitle D option, and to offer our assistance to U.S. EPA in achieving a resolution. In raising this issue, we want to note that our suggestions do not affect our view that if a final federal rule is adopted, it should be promulgated under Subtitle D rather than RCRA Subtitle C, as expressed in ECOS Resolution 08-14 ("Regulation of Coal Combustion Residuals"), which is attached, and the ECOS and ASTSWMO comments regarding the June 2010 proposed rule.

Our concerns are with the self-implementing nature of the Subtitle D option. As currently proposed, an owner or operator of a CCR disposal facility would need to fully comply with both the self-implementing national minimum CCR disposal standards and State requirements, even if the State requirements meet or exceed the national minimum standards. Therefore, absent some type of U.S. EPA recognition of State programs that adopt the federal standards, owners/operators will be confronted with a dual State and federal regulatory regime that would be problematic for the effective implementation of requirements for CCR facilities. The potential for duplication of a federal rule with existing State CCR regulatory programs was raised in the ECOS resolution. The ASTSWMO comments regarding the 2010 proposed rule also noted the need for U.S. EPA to address conflicts between the federal minimum Subtitle D standards and State standards. We believe that U.S. EPA, in promulgating a final rule under Subtitle D, should establish a mechanism by which the agency acknowledges that a State permit program that meets or exceeds the federal minimum CCR standards has primary authority to directly administer the federal Subtitle D rule.

We recognize that U.S. EPA proposed a Subtitle D rule under the 40 CFR Part 257 Subtitle D Criteria based on its analysis of its statutory authority. Citing its own lack of authority to implement and enforce the proposed Subtitle D rule, U.S. EPA notes in the "Implementation and Enforcement of Subtitle D Requirements" section of the preamble that "the subtitle D standards have been drafted so that they can be self-implementing – that is, the facilities can comply without interaction with a regulatory authority." (75 FR 35211, June 21, 2010) U.S. EPA further indicates that it would encourage the States to adopt minimum nationwide criteria under Subtitle D if the agency were to choose to promulgate such criteria. There are additional references in the preamble to facilities complying with the minimum federal standards "even in the absence of a State program." (75 FR 35211) Such statements could be

interpreted as recognition by U.S. EPA of the primary authority and responsibility States have in the implementation and enforcement of a federal Subtitle D regulation for CCRs.

We encourage U.S. EPA to include in a final Subtitle D rule an explicit statement that U.S. EPA views compliance with a State program that meets or exceeds the federal minimum criteria as compliance with the federal criteria, and that the self-implementing federal criteria would only apply in the absence of such a State CCR program. To accomplish this, given the lack of U.S. EPA statutory authority to require federal approval procedures for the State adoption of the federal criteria under Part 257, we suggest that U.S. EPA provide a mechanism by which a State could request an U.S. EPA adequacy determination, or approval, of its CCR permit program. The procedures for a State's voluntary submittal of its CCR permit program to U.S. EPA could be patterned after those in the State Implementation Rule that U.S. EPA promulgated for the RCRA Subtitle D Part 258 Criteria for municipal solid waste (MSW) landfill permit programs, though some streamlining may be needed to make the procedures relevant to CCR permit programs.

In reviewing a State's CCR permit program, we also urge U.S. EPA to provide flexibility for States to have regionally appropriate State standards, in the same way that U.S. EPA-approved State MSW landfill permit programs are able to implement alternative site-specific designs. Depending on how a final Subtitle D rule is written, alternative designs may be different from the minimum nationwide federal criteria, but they nonetheless are rooted in protection of human health and the environment.

States have been implementing and enforcing regulatory programs for the management of CCRs in the absence of federal regulations. A number of States also have recently revised their regulations to enhance their existing programs. In putting into place federal requirements for CCRs, U.S. EPA is encouraged to recognize and build upon State CCR programs.

Again, we offer our assistance in the development of a mechanism to avoid the situation of a dual State and federal regulatory regime for CCRs. If you have any questions or would like to discuss this issue with us, please contact Dania Rodriguez of ASTSWMO at (202) 640-1061 or Lia Parisien of ECOS at (202) 266-4931.

Thank you for your consideration of our views on this important issue to States.

Sincerely,



Dick Pedersen
President, ECOS
Director, Oregon Department of Environmental Quality



Ryan Benefield
President, ASTSWMO
Deputy Director, Arkansas Department of Environmental Quality