



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

Ms. Alexandra Dapolito Dunn
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Ms. Dania E. Rodriguez
Executive Director
Association of State and Territorial Solid Waste Management Officials
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Dear Ms. Dunn and Ms. Rodriguez:

Over the past few months in many different meetings we have been discussing with your members the major provisions of the Definition of Solid Waste (DSW) and the Coal Combustion Residuals (CCR) Final Rules. These final rules were published on January 13, 2015 and April 17, 2015 respectively. These rules provide significant environmental protections for all our communities, while at the same time encouraging safe and environmentally protective recycling of hazardous secondary materials and the beneficial use of coal combustion residuals. These major regulations represent the culmination of many years of sustained efforts including significant outreach to and collaboration with our state partners.

Definition of Solid Waste Final Rule

Regarding the DSW rule, I encourage each state to adopt and implement all provisions of this rule as soon as practical. The benefits of the DSW rule, both in terms of environmental protections and encouraging safe, legitimate recycling will only be fully realized when states adopt and implement the rule, as the impacts of the rule are dependent on how many states adopt it. Because the 2014 DSW rule addresses many of the concerns states raised about the 2008 DSW rule, state adoption rates – and thus cost savings – for the 2014 DSW rule may be much higher than the 2008 DSW final rule, resulting in an EPA estimated potential national annual cost savings as high as \$59 million per year.

As you are aware, states will need to incorporate the more stringent provisions of the DSW rule, which include a new codified definition of legitimate recycling that will help strengthen the states' ability to address sham recycling, as well several important recordkeeping and other administrative changes that will help states monitor compliance with the RCRA hazardous waste recycling regulations. The authorization regulations at 40 CFR Part 271.21(e) set out the procedures and timing for revisions of

state programs; under these regulations, states have until July 1, 2017 (or July 1, 2018 if a statutory change is required) to adopt the more stringent provisions of the DSW rule.

In addition, the new and revised exclusions for recycling under the control of the generator, at verified recycling facilities, and as part of the remanufacturing process, will encourage resource conservation while preserving the states' ability to ensure compliance with the standards. These revisions will help ensure protection of communities adjacent to hazardous secondary material recycling facilities, which include disproportionately minority and low-income populations. These provisions also result in both resource conservation and economic benefits by encouraging certain types of in-process recycling and remanufacturing. The revised definition of legitimate recycling re-affirms the legitimacy of in-process recycling and of commodity-grade recycled products, such as metal commodities. The final rule also includes a targeted remanufacturing exclusion for certain higher-value hazardous spent solvents, which are being remanufactured into commercial-grade products. This exclusion allows manufacturers to reduce the use of virgin solvents, resulting in both economic and environmental benefits, including energy conservation and reduced greenhouse gas emissions.

EPA listened closely to the states and considered their comments very carefully in the development of the final rule. As a result, a number of key provisions were modified to minimize the burden on state resources while taking into account what was important to the state DSW programs all with an eye toward full state adoption and the creation of a national level playing field for hazardous waste recycling. Over the past few months, my staff have been reaching out to the states, providing guidance and training on the rule to state personnel and we will continue those efforts during the coming year.

Coal Combustion Residuals (CCR) Disposal Final Rule

As you know, the CCR rule is self-implementing and imposes minimum federal requirements directly on facilities. However, this rule will best achieve its protections where states adopt regulations, as necessary, that are at least as stringent as the federal regulations. In addition, we encourage states to also revise their Solid Waste Management Plans (SWMPs) to demonstrate how CCR disposal units will be regulated in their state.

EPA is committed to making the process for submittal and approval of SWMPs as streamlined as possible. Consequently, EPA is suggesting that the states, regardless of the status of their SWMP in this regard, focus initially on submitting a plan (or portion thereof) that shows how the state intends to regulate CCR units. In addition, where new state legislation or regulations are necessary, a state may submit their SWMP before their legislation or regulations are finalized; EPA's approval of the plan would be conditioned on the EPA-reviewed legislation being passed or the regulations being promulgated. EPA is working on processes that will enable expeditious review and decisions on the plans, certainly within the 6 months that is required by the regulations in Part 256. As discussed in more detail later, EPA has specified implementation timeframes as part of the final CCR rule. The requirements of the rule that are based on significant engineering or technical efforts, for example, meeting structural stability factors of safety, have implementation timeframes beginning 18 months from promulgation of the final rule. It would be ideal if SWMPs were approved before these deadlines.

States that want to take advantage of the SWMP process and that have SWMPs that have not been approved by EPA or states that have not yet developed a SWMP have two options. The first is to submit a complete SWMP that includes the provisions that address the new criteria for CCR disposal facilities. Alternatively, because EPA's regulations authorize partial approvals of plans, states may focus on those aspects that are most critical to implementation of the CCR requirements, and take more time to develop

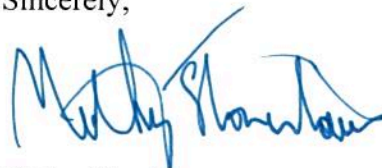
a full SWMP. Where a state is particularly concerned about the implementation timelines in the final CCR rule, a state could submit only that portion of its SWMP that describes how it will evaluate requests from facilities for additional time to meet critical requirements. (Additional detail on granting compliance schedules is below.) EPA will then review the partial SWMP and if it meets the criteria in our regulations, grant partial approval. EPA will work with the states to establish reasonable timetables for completion of the final plan. Thus, as part of any partial submission, states should include the time frames they believe would be needed to submit a completed plan.

Although we recognize that states have expressed concerns on this issue, we think that a court will accord substantial weight to the fact that a state has an EPA-approved complete or partial SWMP addressing CCR in situations where a citizen suit is brought regarding the implementation of the federal CCR regulations. Even if the state may consider their existing regulations more stringent than the federal regulations, the EPA review process and associated record could be helpful in having the court understand that the state regulations are indeed adequate and have been reviewed by EPA in the context of the minimum federal requirements.

Another important benefit of having an EPA-approved complete or partial SWMP is that the state would be able to offer facilities that do not meet the minimum federal criteria additional time to come into compliance with these federal requirements by establishing a compliance schedule. The Resource Conservation and Recovery Act (RCRA) requires that the compliance schedule be limited to a “reasonable time” not to exceed 5 years from the date of promulgation of our regulations (that is not to exceed April 2020). What is reasonable depends on the facts of the particular situation but would generally take into account the technical complexity or the requirement, the specific activities that need to be completed, and factors such as geology, geography, weather, and particular engineering circumstances. It is also important to remember that EPA has specified implementation timeframes as part of the final CCR rule. The requirements of the rule that are based on significant engineering or technical efforts, for example, meeting structural stability factors of safety, have implementation timeframes beginning 18 months from promulgation of the final rule. EPA has heard that some facilities are concerned about their ability to meet these timeframes. In the event a limited extension of time becomes necessary for certain facilities, states with an approved SWMP (either partial or complete) have authority through SWMP approval to grant compliance schedules.

Let me reiterate that the completion of these two significant rulemakings represents the culmination of a great amount of cooperation and communication with the states. We look forward to a continued close partnership as we move to implement both of these rules, and are looking forward to the upcoming meeting of the ASTSMWO CCR implementation workgroup in July, the ASTSMWO training conference in August, a further ASTSMWO-sponsored DSW training in September, and upcoming ECOS meetings.

Sincerely,



Mathy Stanislaus
Assistant Administrator