

USWAG Update: CCR, Treated Wood & Decomm

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CCR Issues



CCR Rulemaking

- 1980 Bevill Amendment to RCRA
- 1988, 1999 Reports to Congress
- 1992, 2000 Regulatory Determinations
- Coal Ash DOES NOT warrant regulation as hazardous waste

CCR Rulemaking

- June 2010 Proposal
 - “Special” Hazardous Waste (Subtitle C)
 - “Self-implementing” Subtitle D
 - “D Prime”
- 2013 CCR NODA
- Effluent Limitation Guidelines Proposal

CCR Rulemaking

- Subtitle C Hazardous Waste Option
 - Reverse Bevill Regulatory Determination , list CCR as “special waste” subject to *full* hazardous waste regulation
 - Utilities managing CCR would obtain hazardous waste permits and meet all hazardous waste requirements
 - Wet handling of CCR terminated 5 years after effective date
 - Regulation of inactive units that did not close pursuant to Subtitle C hazardous waste standards
 - Industry’s estimated cost of compliance: \$55.3 to \$74.5 billion (excluding corrective action)

CCR Rulemaking

- Subtitle D Non-Hazardous Waste Option
 - Regulate CCR as non-hazardous waste
 - CCR landfills and surface impoundments subject to design standards, groundwater monitoring, location restrictions and closure/post closure standards
 - Impoundments subject to retrofit and structural stability requirements
 - Self-implementing rule enforced through citizen suits

CCR Deadline Litigation

- Lawsuit Filed April 2012 by Environmental Groups & Ash Marketers
- Seeking to Compel Rulemaking Under RCRA Section 2002(b)
- USWAG, NMA Intervened in Lawsuit
- Parties Agree to Consent Order Requiring Action on Subtitle D Proposal by December 19, 2014

CCR Legislation

- 112th Congress: Coal Residuals Reuse & Management Act (CRRMA) HR 2273, S 1751
- HR 2218 Passed House on July 25th, 265 - 155
- Amends RCRA's Subtitle D non-hazardous waste program to add a new section for CCR
- Authorizes states to adopt a non-hazardous waste permit programs for CCR under RCRA subtitle D
- Assures coal ash is regulated as non-hazardous

CCR Legislation

- Structural integrity & inspection standards
- Design standards
- Groundwater monitoring/protection standards
- Accelerated corrective action for unlined impoundments
- Air & water quality protection
- Financial assurance
- Closure standards

CCR Legislation - Bottom Line

- Establishes non-hazardous, minimum federal requirements
- Will require all disposal units receiving CCR to obtain an enforceable permit
- Will ensure all units operate safely/protectively
- Provides EPA with oversight authority; gives states the opportunity to establish/implement program
- Senate Bill introduction expected soon

Effluent Limitation Guidelines

- Revisions to 1982 Regulations under CWA
- Proposed Rule signed April 19, 2013; Final Rule September 2015
- Standards for FGD Wastewater, Fly Ash and Bottom Ash Transport Water, Leachate & Metal Cleaning Wastes
- Impact CCR management options
- Impact on surface impoundment operations

CCR Issues – Key Issues

- Regulatory Status – C v D
- Role of States in CCR regulation
- Interplay of CCR and ELG rule important
- Timing of rule critical
- Need flexibility in final rule

CCR Rulemaking – Possible Outcomes

- Federal Standards are Coming
- Liners, Location Restrictions (New Units)
- Groundwater Monitoring/Protection
- Impoundment Integrity, Retrofit or Phase-out (Pond Closure)
- Dry Handling of Fly Ash
- Corrective Action
- Citizen suits

Treated Wood Issues



Treated Wood Issues

- Stockholm Convention on Persistent Organic Pollutants (POPs)
 - October 2012 – POPRC recommends listing penta as POP
 - October 2014 – POPRC considering draft risk evaluation on penta
 - Options for listing: Annex A (elimination), Annex B (restriction)
 - Conference of Parties must approve listing
 - US has not ratified Stockholm Convention

Treated Wood Issues


- Ecological Rights Foundation (ERF) Lawsuit
 - Leaching of penta from poles is violation of NPDES & imminent and substantial endangerment under RCRA
 - Ninth Circuit dismissed case
 - Poles are not “point sources”
 - Penta leaching from poles is not “discarded,” cannot be considered a solid waste subject to imminent and substantial endangerment finding
 - EPA disagreed with Court’s ruling and is looking to challenge in other cases

Treated Wood Issues

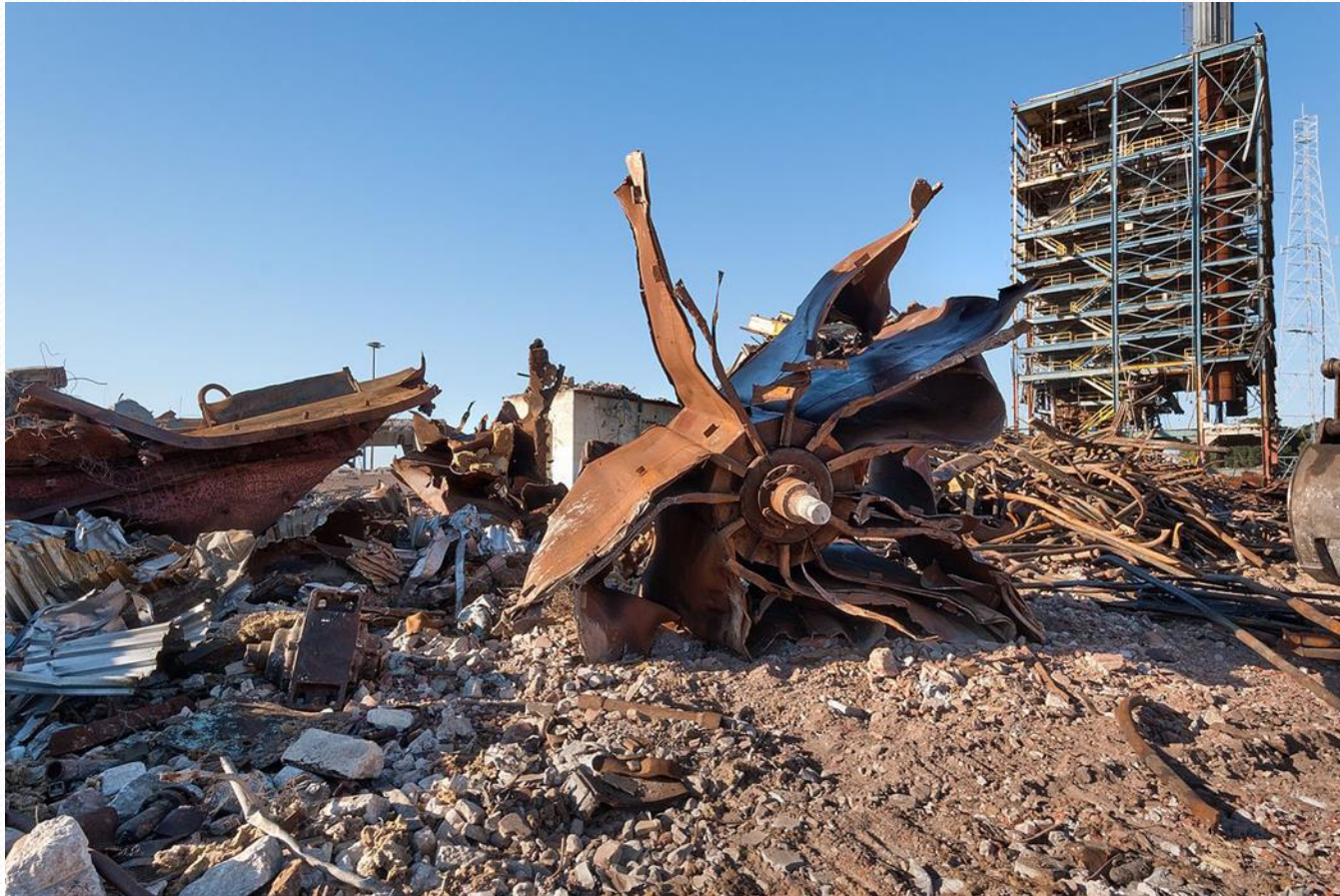
- Vermont Public Service Board, Order #8310
 - General investigation into practices of utilities using pentachlorophenol-treated wood
 - Vermont Gas approached the PSB after discovering the possibility that soil contaminated with penta could be disturbed by pipeline construction
 - Four cases of penta leaching from poles; three instances of gw contamination
 - Vermont Gas developed a soil management plan to identify contaminated areas and prevent contamination during construction

Treated Wood Issues

- North Hempstead, NY, L.L. No. 13-2014 (Chapter 64B)
 - Utility poles treated with hazardous chemicals such as pentachlorophenol, creosote, inorganic arsenic, or other similar chemicals constitute a potential danger to the public and that the public should be informed of such potential danger.
 - Requires warning signs on new and recently installed utility poles treated with hazardous chemicals
 - Hazardous chemicals = “Any chemical compound used as a wood preservative to treat wood utility poles to protect them from fungal decay and wood-destroying pests.”

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- NOTICE — THIS POLE CONTAINS A HAZARDOUS CHEMICAL. AVOID PROLONGED DIRECT CONTACT WITH THIS POLE. WASH HANDS OR OTHER EXPOSED AREAS THOROUGHLY IF CONTACT IS MADE

Decommissioning Issues



Decommissioning Issues

- Issue flagged by USWAG Steering & Policy Committees
- USWAG Resources assembled into Decommissioning Resource Page
 - Designed to support members' interests associated with decommissioning activities
 - Compilation of existing USWAG products—issue papers, memoranda, resource materials
- Decommissioning Workshop held June 2014; future workshops likely

Questions?

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