

THE EPA AND FUTURE OF CCPs

By Jim Roewer

As the U.S. Environmental Protection Agency (EPA) moves forward in the development of regulations addressing the disposal of coal combustion products (CCPs) and their mine placement – proposals are expected sometime in 2005, with final actions a year later. Some recent developments could either help or hinder that process.

EPA CCP “LISTENING SESSIONS”

On March 2 of this year, EPA announced plans for field hearings to receive comments from interested citizens on CCP mine placement, landfill and surface impoundment disposal. The EPA “listening sessions” took place on March 23 in State College, Pennsylvania; April 13 in Dallas, Texas; April 22, in Vincennes, Indiana; and May 5, in Harrisburg, Pennsylvania, in conjunction with the Office of Surface Mining Forum on Mineplacement.

The environmental special interest groups requested these public meetings to provide themselves with another opportunity to attack coal mining and coal combustion by advocating overly stringent and unnecessarily costly regulation of CCPs. Both USWAG and ACAA testified at these hearings, in addition to representatives of power producers, state regulatory officials, CCP marketers, academia, and environmental groups that favor the use of CCPs to address the environmental damage from coal refuse piles, countering the environmentalists’ statements by expressing support for the management and use of CCPs. Our allies made a powerful impression on the EPA officials at the meeting by presenting science-based and policy-based arguments for retaining the nonhazardous regulatory status for CCPs, and underscoring the environmental benefits of CCP mine application.

HOOSIER ENVIRONMENTAL COUNCIL RULEMAKING PETITION

On February 9, 2004, the Hoosier Environmental Council (HEC) and approximately 125 other environmental special interest groups filed a petition with EPA, seeking an immediate ban on the placement or disposal of CCPs into groundwater or surface water, including manmade waterbodies, until EPA promulgates “federally enforceable regulations” under RCRA applicable to “placement, re-use and disposal of coal power plant waste.” The petition alleges that mismanagement of CCPs has contaminated groundwater and surface water throughout the United States and that further CCP disposal or mine placement should be halted until EPA completed the rulemaking process. Clearly, the target of the petition is CCP management in ash ponds, but it could also implicate CCP mine placement as well. If EPA were to agree to the petition, the result would be to shut down a large percentage of the industry’s CCP disposal capacity, and thus, shut down approximately 40 percent of U.S. coal-fired generation. The call for federally enforceable standards is a thinly veiled reference to regulation under RCRA Subtitle C.

Accordingly, USWAG has urged EPA to deny the petition. In addition, we plan to submit a formal response to the petition, rebutting the allegations made by HEC.

NATIONAL ACADEMY OF SCIENCES STUDY ON MINE PLACEMENT OF CCPs

This past January, Congress passed the Omnibus Budget that included language directing EPA to contract with the National Academy of Sciences (NAS) for an independent study of



*Jim Roewer, Executive Director,
Utility Solid Waste Group
(USWAG)*

mine placement of CCPs. USWAG continues to urge EPA to complete its work on mine placement and then provide its work product to the NAS for review. Unfortunately, we understand that EPA management has decided to suspend its work on mine placement and await the results of the NAS study, which is not likely to be issued before early 2006. Thus, EPA action on mine placement now appears to be several years away.

VICTORIES IN PENNSYLVANIA

While the environmental special interest groups have been vocal and active in their campaign against CCPs, coal mining and coal combustion, the ash industry recently achieved notable successes at the direct expense of the environmentalists’ interests.

In Pennsylvania, utilities and ash marketers achieved an important win in February 2004 when the Pennsylvania General Assembly’s Joint Legislative Air and Water Pollution Control and Conservation Committee (Joint Committee) issued a report rejecting environmental activists’ demands for a statewide moratorium on CCP mine placement. The bipartisan legislators, who made up the Joint Committee, unanimously rejected the moratorium and expressed their strong support for the continued use of CCPs for mine reclamation and other beneficial purposes. The report states that the “beneficial use of coal ash, including mine

reclamation, has been well documented and the potential risks have been thoroughly examined and these results have been reported to local, state and federal agencies... coal ash can be effectively and safely used when properly managed. The information also demonstrates the significant economic and environmental benefits coal ash plays in the reclamation activities in the Commonwealth."

Shortly after the Joint Committee report was issued, the Pennsylvania Department of Environmental Protection (DEP) announced another favorable development for mine placement when it issued a final report on the Bark Camp Demonstration Project that concludes that coal ash and dredged material can be used successfully as fill to remove health and safety hazards associated with abandoned mines. Five years of monitoring data demonstrates

significant reductions in acid mine drainage, the removal of physical hazards from past mining activities, and the restoration of natural vegetation and habitat. The well-documented success of the Bark Camp Demonstration Project provides another rebuttal to environmental groups' claims that environmental benefits of mine placement have not been proven.

Also, following the release of the Joint Committee's report, the Pennsylvania DEP issued a general use permit to Lehigh Coal and Navigation Co. to reclaim its Springdale Mine in Tamaqua, Pennsylvania, using dredged sediment stabilized with coal fly ash. The permit application had been vigorously opposed by the Army for a Clean Environment, a Tamaqua-based citizen group, that is supported by the Clean Air Task Force. The approval of the general-use permit marks yet another success in the battle over the beneficial use of CCPs and another setback for opponents of CCPs and coal.

THE BATTLE CONTINUES

We can expect the environmental special interest groups to step up their campaign against CCPs, coal mining and coal combustion. USWAG, in conjunction with ACAA, individual utilities and ash marketers will face that challenge and continue to advocate public policies that encourage the sound management of CCPs, and support and expand beneficial use. □

USWAG is responsible for addressing solid and hazardous waste issues on behalf of the utility industry. USWAG engages in advocacy pertaining to RCRA, TSCA, CERCLA and HMTA. USWAG's mission is to address the regulation of utility wastes, byproducts and materials in a manner that protects human health and the environment and is consistent with the business needs of its members. USWAG is dedicated to assisting members in the management of wastes and the beneficial use of materials associated with the generation, transmission, or sale of electricity and natural gas. For more information, including USWAG membership opportunities, contact Jim Roewer at jim.roewer@uswag.org or (202) 508-5645.

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