

public hearing that appeared in the **Federal Register** on Thursday, December 17, 1998, (63 FR 69585), announced that a public hearing was scheduled for Wednesday, May 5, 1999, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 4251 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Wednesday, March 17, 1999. The outlines of topics to be addressed at the hearing were due on Wednesday, April 14, 1999.

The notice of proposed rulemaking and/or notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Wednesday, April 21, 1999, no one has requested to speak. Therefore, the public hearing scheduled for Wednesday, May 5, 1999, is cancelled.

**Cynthia Grigsby,**

*Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

[FRL-6331-9]

#### Availability of Report to Congress on Fossil Fuel Combustion; Request for Comments and Announcement of Public Hearing

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability.

**SUMMARY:** The Environmental Protection Agency ("we" or EPA) is today making available the Agency's Report to Congress on Fossil Fuel Combustion that is required by section 8002(n) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6982(n). The Report to Congress contains a detailed study of fossil fuel combustion wastes not previously studied (the "remaining wastes"), including oil, natural gas, and certain coal combustion wastes. Its purpose is to determine whether the remaining fossil fuel combustion wastes should retain their exemption from hazardous waste regulations as provided by section 3001(b)(3)(A)(i) of RCRA and codified at 40 CFR 261.4(b)(4). This exemption is often referred to as the Bevill Exemption. The report presents

the Agency's study methods, findings and tentative recommendations regarding the exemption from hazardous waste regulation for the remaining fossil fuel combustion wastes. A brief summary of the tentative recommendations appears in the **SUPPLEMENTARY INFORMATION** section below.

Information submitted in public comments and at a public hearing will be used by EPA in conjunction with the Report to Congress to make a final determination on the regulatory status of these remaining fossil fuel combustion wastes.

**DATES:** EPA will accept public comments on the Report to Congress until June 14, 1999. The Agency will hold a public hearing on the Report to Congress on May 21, 1999.

**ADDRESSES:** Those persons wishing to submit public comments must send an original and two copies of their comments referencing EPA docket number F-1999-FF2P-FFFFF to: RCRA Docket Information Center (5305W), U.S. Environmental Protection Agency Headquarters (EPA,HQ), 401 M Street, SW., Washington, DC, 20460. Hand deliveries of comments should be made to the Arlington, VA address below.

Comments may also be submitted electronically through the Internet to: [rcra-docket@epa.gov](mailto:rcra-docket@epa.gov). Comments in electronic format should also identify the docket number F-1999-FF2P-FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Docket Information Center (RIC), located at Crystal Gateway I Building, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603-9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost \$0.15 per page. The Report to Congress is also available electronically. See the Supplemental Information section below for information on electronic access.

Requests to speak at the public hearing should be submitted in writing to the Public Hearing Officer—Fossil Fuel Combustion, Office of Solid Waste, Industrial & Extractive Wastes Branch (5306W), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The May 21, 1999 public hearing will be held at the Environmental Protection Agency Auditorium, Waterside Mall, 401 M Street, SW, Washington, DC. The hearing will begin at 9:30 a.m. with registration beginning at 9:00 a.m. The hearing will end at 3 p.m. but may be concluded earlier. Oral and written statements may be submitted at the public hearing. Persons who wish to make oral presentations must restrict them to 15 minutes maximum, and are requested to provide written comments for inclusion in the record.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline at (800) 424-9346 or TDD (hearing impaired) (800) 553-7672. In the Washington, DC metropolitan area, call (703) 412-9810 or TDD (703) 412-3323. For more detailed information on specific aspects of today's action, contact Dennis Ruddy, U.S. Environmental Protection Agency (5306W), 401 M Street, SW., Washington, DC 20460, at (703) 308-8430, or e-mail: [ruddy.dennis@epa.gov](mailto:ruddy.dennis@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Customer Service

In developing the Report to Congress, we tried to address the concerns of all our stakeholders. Your comments will help us improve this regulatory action. We invite you to provide different views on options we propose, new approaches we have not considered, new data, how this regulatory action may affect you, or other relevant information. We welcome your views on all aspects of this action, but we request comments in particular on the items discussed in the Report to Congress. Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible and why you feel that way.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts you support, as well as those you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the report.
- Make sure to submit your comments by the deadline in this notice.

• Be sure to include the name, date, and docket number with your comments.

Copies of the full report, titled Report to Congress: Wastes from the Combustion of Fossil Fuels; Volume 2—Methods, Findings, and Recommendations (EPA publication number EPA 530-R-99-010), are available for inspection and copying at the EPA Headquarters library, at the RCRA Docket (RIC) office identified in ADDRESSES above, at all EPA Regional Office libraries, and in electronic format at the following EPA Web site: <http://www.epa.gov/osw/special.htm>. Printed copies of Volume 2 and the executive summary, titled Report to Congress: Wastes from the Combustion of Fossil Fuels; Volume 1—Executive Summary (EPA publication number EPA 530-S-99-010), can also be obtained by calling the RCRA/Superfund Hotline at (800) 424-9346 or (703) 412-9810. The Executive Summary is also available in electronic format at the EPA Web site identified above.

## I. Background

RCRA section 3001(b)(3) (hereafter referred to as the Bevill Exemption) exempts, among other things, fossil fuel combustion wastes from regulation under RCRA subtitle C, pending completion of a Report to Congress and a subsequent determination of whether such regulation is warranted. In RCRA section 8002(n), Congress directed EPA to conduct a detailed and comprehensive study based on eight study factors (discussed below) and submit a Report to Congress on “the adverse effects on human health and the environment, if any, of the disposal and utilization of fossil fuel combustion wastes.” RCRA section 3001(b)(3)(C) then requires that EPA determine, within six months of the date of submission of the Report to Congress, either to promulgate regulations for fossil fuel combustion wastes under subtitle C or determine that subtitle C regulation is unwarranted.

The Bevill Exemption was added to RCRA on October 12, 1980, as part of the 1980 Solid Waste Disposal Act Amendments. In response to the 1980 RCRA amendments, EPA published an interim final amendment to its hazardous waste regulations to reflect the provisions of the Bevill Exemption (40 CFR 261.4(b)(4)). In 1991, a suit was filed against EPA for failure to complete a regulatory determination on fossil fuel combustion (FFC) wastes. *Gearhart v. Reilly* Civil No. 91-2345 (D.D.C.). On June 30, 1992, the Agency entered into a Consent Decree which established a schedule for EPA to complete the

regulatory determinations for all fossil fuel combustion (FFC) wastes. FFC wastes were divided into two categories: (1) fly ash, bottom ash, boiler slag, and flue gas emission control waste from the combustion of coal by electric utilities and independent commercial power producers, and (2) all remaining wastes subject to RCRA Sections 3001(b)(3)(A)(i) and 8002(n). On August 9, 1993, EPA published a determination for the first category of wastes, concluding that regulation under subtitle C for these wastes was not warranted. To make an appropriate determination for the second category, or “remaining wastes,” EPA decided that additional study was necessary. Under the current court-ordered deadlines, the Agency was to complete this Report to Congress by March 31, 1999, and issue a regulatory determination by October 1, 1999.

## II. Report to Congress

EPA has completed its study of the remaining wastes for fossil fuel combustion and prepared the Report to Congress on Wastes from the Combustion of Fossil Fuels. In keeping with the statutory requirements, the report addresses the following factors (hereafter “study factors”) required under section 8002(n) of RCRA:

- The source and volumes of such materials generated per year;
- Present disposal practices;
- Potential danger, if any, to human health and the environment from the disposal of such materials;
- Documented cases in which danger to human health or the environment has been proved;
- Alternatives to current disposal methods;
- The costs of such alternatives;
- The impact of those alternatives on the use of natural resources; and
- The current and potential utilization of such materials.

In addition, RCRA section 8002(n) directs the Agency to review other federal and state studies and actions (e.g., regulations) to avoid duplication of effort.

The resulting review and discussion of EPA’s analysis is organized into seven chapters in Volume 2 of the Report to Congress; Volume 1 is an Executive Summary. The first chapter of Volume 2 briefly summarizes the purpose and scope of the report, general methods and information sources used, and EPA’s decision making methodology. The second chapter provides an overview of industry sectors that practice fossil fuel combustion. The third chapter addresses comanaged wastes at coal-fired utilities. The fourth

chapter addresses non-utility coal combustion wastes. The fifth chapter addresses combustion wastes from the use of fluidized bed technology. The sixth chapter addresses wastes from oil combustion. The seventh chapter addresses natural gas combustion. Each of chapters 3 through 7 addresses the study factors identified above followed by a summary of findings, and concludes with recommendations. The recommendations are EPA’s tentative conclusions regarding exemption from RCRA Subtitle C for the respective remaining wastes.

Briefly, the Agency has tentatively concluded to retain the exemption for the disposal of: comanaged and co-burning coal combustion wastes at utilities; coal combustion wastes at non-utilities; petroleum coke combustion wastes; and for fluidized bed combustion wastes. The Agency has also tentatively concluded to retain the exemption for natural gas combustors. The Agency has tentatively concluded that, for the beneficial use of coal combustion wastes in agricultural applications and for the disposal of oil combustion wastes, some form of regulation or voluntary controls may be appropriate. The Agency currently has insufficient information on managing fossil fuel combustion wastes in surface and underground mines in order to assess the potential for risks associated with this practice, whether for disposal or beneficial uses such as mine reclamation. The Agency is seeking additional information on this practice from all potential sources, including those commenting on the Report to Congress, in order to determine whether additional controls are appropriate.

Finally, the Agency has tentatively concluded to retain the exemption for all other beneficial uses of fossil fuel combustion wastes.

Interested parties should obtain the full text of the tentative recommendations, which appears in both Volume 1 and Volume 2 of the Report to Congress.

Dated: March 31, 1999.

**Matthew Hale,**

*Acting Deputy Director, Office of Solid Waste.*  
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