

US EPA ARCHIVE DOCUMENT



Office of Solid Waste

Environmental Fact Sheet

Regulatory Determination for Wastes from the Combustion of Fossil Fuels

The Environmental Protection Agency (EPA) has concluded that fossil fuel combustion wastes do not warrant regulation as hazardous under Subtitle C of the Resource Conservation and Recovery Act (RCRA). EPA is retaining the hazardous waste exemption for these wastes. However, the Agency has determined that national non-hazardous waste regulations under RCRA Subtitle D are needed for coal combustion wastes disposed in surface impoundments and landfills and used as minefill. The Agency also concluded beneficial uses of these wastes, other than for minefilling, pose no significant risk and no additional national regulations are needed.

Background

RCRA exempted fossil fuel combustion wastes from hazardous waste regulation until EPA completed a Report to Congress and made a determination on whether the wastes should be regulated as hazardous. In a 1993 regulatory determination, we addressed some large volume coal combustion wastes generated at electric utility and independent power producing facilities. The recent regulatory determination addresses all remaining fossil fuel combustion wastes, including the remaining coal combustion wastes generated at electric utilities as well as at other industrial facilities and oil and gas combustion wastes. This determination affects more than 110 million tons of fossil fuel combustion wastes that are generated each year, virtually all from burning coal. Electric utilities generate about 90% of the total waste.

Action

While fossil fuel combustion wastes remain exempt from hazardous waste regulation, we will establish national regulations under RCRA Subtitle D for coal combustion wastes disposed in surface impoundments and landfills and used as minefill. We will develop the regulations through notice and comment rulemaking and in consultation with states and other interested stakeholders. RCRA relies on states to implement these non-hazardous waste requirements. Citizens have the right to bring enforcement action in federal district court directly against facilities that do not comply with the final regulations. For coal combustion wastes used as minefill, we will also consult with the Office of Surface Mining in the U.S. Department of the Interior to assess whether equivalent protectiveness could be achieved by using regulatory authorities available under the Surface Mining Control and Reclamation Act (SMCRA).

The utility industry has made significant improvements in implementing controls such as liners and groundwater monitoring at surface impoundments and landfills in recent years. In addition, state regulatory programs and oversight have also improved; currently more than 40 states have the authority to require liners and groundwater monitoring, as well as other controls. While this positive trend is encouraging, we remain concerned because there are damage cases, and several hundred of these units are without monitoring and/or liners to protect ground water. There are also still some gaps in state programs.

Minefilling with coal combustion waste is a recent and rapidly growing use that can neutralize acid mine drainage and stabilize and reclaim mined lands. However, when wastes are placed directly in the groundwater or without adequate analysis of geochemical/waste interactions, minefilling can contaminate ground water. States are beginning to adopt regulatory programs to control minefilling activity, but currently there are very few comprehensive programs.

We believe, with the substantial progress already achieved through improved state programs and voluntary industry actions, Subtitle D regulations (and possibly SMCRA for minefilling) will provide sufficient incentives and sanctions to states and industry to close remaining gaps. Also, as we proceed with developing the Subtitle D regulations, we will take enforcement action under RCRA's imminent and substantial endangerment provisions, and rely on Superfund cleanup authorities to address damages that result in risk to human health and the environment.

We will also assess new information on risks associated with managing fossil fuel combustion wastes as it becomes available and monitor trends toward protective management, to evaluate whether this Subtitle D approach will close the gaps we have identified. If new information indicates that this approach is not sufficiently protective, the Agency will re-examine its decision whether hazardous waste regulation is needed.

Currently, almost one quarter of the coal combustion waste generated each year – about 28 million tons – is beneficially used in areas such as construction applications, agricultural amendment and waste stabilization. We did not identify any significant risks associated with these uses. Further, we do not wish to place any unnecessary barriers on the beneficial uses of these wastes because they conserve natural resources, reduce disposal costs and reduce the total amount of waste destined for disposal.

For More Information

This *Federal Register* notice and this fact sheet are available in electronic format on the Internet at <http://www.epa.gov/epaoswer/non-hw/muncpl/fossilfuel.htm>. For additional information or to order paper copies of any documents, call the RCRA/Superfund Hotline at (800) 424-9346 (toll free) or (703) 412-9810 in the Washington, D.C. metropolitan area. The RCRA/Superfund Hotline operates weekdays (except federal holidays) from 9:00am to 6:00pm.