Joint IMCC-EPA Summary Meeting Notes[1]
from the
States/Tribes/Federal Meeting on Mine Placement of Coal Combustion Waste
San Antonio, TX
November 14-15, 2001

Opening Remarks

(Greg Conrad, Executive Director, IMCC)

Greg Conrad welcomed attendees and provided a brief history of IMCC's participation in discussions concerning EPA's regulatory determination on coal combustion wastes (CCW).[2] He noted that a meeting in May of this year opened the dialog among EPA, other federal agencies (OSM and DOE), and State regulators (including tribal regulators) to assess mine placement of CCW. In August of this year, State regulators met to continue discussions and drafted a discussion outline to convey the direction they felt CCW mine placement policy should go. He noted that his use of the term "State" includes Tribes as well.

Part I: EPA's Minefill Risk Assessment/Modeling ("MRAM") Project

(Robert Wahlstrom, DPRA)

The purpose of this presentation was to provide a status report on EPA's MRAM project and explain its relationship to the EPA regulatory development effort. Robert Wahlstrom explained that EPA has contracted to DPRA the task of gathering the multitude of ground-water studies of individual CCW minefill sites that exist nationwide into one computerized, sortable database. The goal is to use the data to understand the nature of existing minefilling activities and their impact on ground water and to more accurately assess what data needs exist or what areas of control should be "guiding principles" for ground-water protection. EPA emphasized that the database effort is currently in a very early stage of data gathering, and quality assurance efforts have not been performed. It is on a separate track from the CCW minefill rulemaking activity and will most likely not be finished before any proposed rule— making it most useful for the implementation stage when developing policy, rather than when developing the regulatory

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[1] These meeting notes are summary in nature and should be read in conjunction with the meeting materials, overheads, and handouts included on the meeting CD.

[2] Throughout this meeting, speakers used various terms to refer to the solid materials generated as a result of the combustion of coal, including: coal combustion waste, coal combustion byproducts, coal combustion products, and coal ash. For ease of presentation, these notes use the abbreviation "CCW" throughout, except in cases where the speaker was making a point regarding distinctions between the terms used. The use of "CCW" in these notes is not meant to imply a preference for the categorization of these materials as "waste."

direction. The system, which distinguishes between underground and surface mines, will be tested for a few sites and then the full range of data that is available nationwide will be added.

The database is an Excel spreadsheet that includes:

- Data for 69 mine sites as provided by States, OSM, and DOE. The data is primarily from mines but also some power plants.
- Site characteristics, such as: mine characteristics, CCW placement characteristics, mine site characteristics.
- Ash and leachate characteristics, such as: CCW source, solid CCW chemical characteristics (i.e., whole waste concentration), CCW leachate chemical characteristics.
- Ground-water data summary, including: selected wells, sample date, constituent, average concentration.
- Ground-water data detail, a "dump" of the raw data available.
- Like-site characteristics, a summary page that can select parameters to categorize like sites together. Many changes have been suggested for this summary.
- The data do not include the source of the coal that generated the ash.

Future actions will include:

- DPRA:
  – Changes to the data and categorization procedures based on recent input and any additional input (i.e., new data or corrections) from the States. One suggestion is to distinguish the source of the coal and dates of ash generation (e.g., pre-NOx control or post-NOx control).
  – Addition of definitions for the reader.
- IMCC/EPA: Provide the States with the list of 69 sites currently included in the database and an explanation of the type of additional data needed (Mr. Walstrom noted that complete data is not available for each site listed).
- States: States willing to provide EPA with additional data, comments regarding data, or the names of appropriate State contact persons, should send that information to:

  Mike Clipper
  USEPA (5307W)
  1200 Pennsylvania Ave., NW
  Washington, DC 20460
  Tel 703-308-8763; Fax 703-308-0509
  clipper.mike@epa.gov

Part II: Presentation of Illinois Data Management System for Mine Placement Activities
(Dan Wheeler, Illinois Department of Natural Resources)

Dan Wheeler is the staff hydrologist for the Illinois Department of Natural Resources's Office of Mines & Minerals and is responsible for managing all data that come into the office related to mining activities, including:

- Surface water data as required by SMCRA and the NPDES permitting programs
- Ground-water data as required by SMCRA and State regulations (35 IAC 620)
- Coal combustion material[3] data as required by SMCRA and the Illinois Environmental Protection Act (for coal combustion waste (CCW) – 27 parameters, including 19 metals; for coal combustion byproducts (CCB) – 19 metals)

Mr. Wheeler exhibited the user interface and described the capabilities of the Ground-water Quality Database they developed and maintain in-house:

- The system is a Paradox-based database that contains ground-water monitoring data. The database includes all of the ground-water monitoring wells at mine placement sites. The relevant data (such as well depth, casing elevation, etc.) has been entered in the database and confirmed by the operator for about 20% of the wells.
- Includes background information such as well depth, ground elevation, casing.
- Includes data on required monitoring frequency (annually, bi-annually, etc.).
- Organizes data into three data sets: 1 (SMCRA parameters), 2 (35 IAC 620 parameters), and 3 (water elevation).
- Has the ability to graph selected parameters in order to see trends.
- Can calculate statistics for wells including mean, standard deviation, minimum, and maximum.
- Can generate inspector/regulated operator reports showing all the requirements for a selected facility. This element is not yet completed.
- Can generate ground-water reports (raw data table for each well).
- Plan to allow the electronic submission of data and will include comments, such as when the well was sealed.
- Other plans include: 1) incorporating information on ground-water classes, 2) describing the types of materials received by the site (e.g., slurry, CCW, or CCB), 3) showing the ground-water standards for each site on the graphs, and 4) completing data entry for all monitored wells.

Mr. Wheeler noted that another initiative, started about 4 years ago but still in its infancy, is a database for the CCW characteristics data from the Ash Report Data Entry Form which is required quarterly. A goal is eventually to receive this data electronically. More attention will be given to this database once ground-water database is done.

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[3]Illinois classifies coal combustion material as coal combustion waste if disposed and coal combustion byproduct if beneficially used.

Mr. Wheeler also stated that they are in the process of doing GIS well mapping. The GIS tool will enable the user to simply click on a well and pull up all data in the database for that particular well. Additional data layers such as county boundaries, roads, and streams will enable the user to get a clear picture of location.

Part III: Review and Discussion of EPA Reports on State Regulations

EPA Presentation (Bonnie Robinson, EPA Office of Solid Waste)

In advance of the meeting, EPA, through IMCC, provided copies of two draft reports to the participants:

- "Regulation and Policy Concerning Mine Placement of Coal Combustion Waste in 26 States"
- "Mine Placement of Coal Combustion Waste – State Program Elements Analysis"

Bonnie Robinson explained the two EPA reports are working drafts that are being shared with State and Tribal regulatory authorities for their review and comment to EPA regarding completeness and accuracy. She emphasized that the documents are not an evaluation of state programs and do not comment on their adequacy. They are just summaries of the information available to EPA.

Regulation and Policy Concerning Mine Placement of Coal Combustion Waste in 26 States (the larger report):

- A detailed overview of State regulations and policy (under both mining and solid waste programs) concerning CCW mine placement, with an emphasis on coal mines.
- Includes 26 States that were selected on the basis of number of coal mines.
- Summarizes the elements of state programs that are applicable to CCW mine placement.
- Table 1 is an overview of Federal SMCRA in relation to elements.
- Tables 2 and 3 have been updated and expanded upon in the second report (see below).
- Shaded cells in the State tables indicate requirements that are different from/in addition to SMCRA requirements.

Mine Placement of Coal Combustion Waste – State Program Elements Analysis (the smaller report):

- Summarizes the CCW mine placement regulations/policy from the detailed report.
- Has been referred to as a "gaps analysis," but EPA is not making a judgement that all of the elements identified must be addressed for a program to be effective.
- Lists the research gaps that EPA needs to fill for each program element.
- Shaded columns indicate that the research for that component is still in progress.

EPA would appreciate specific comments or edits on either document by **January 1, 2002**. These comments may be directed to:

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USEPA (5306W)
1200 Pennsylvania Ave., NW
Washington, DC 20460
Tel 703-308-8429; Fax 703-308-8686
robinson.bonnie@epa.gov

OSM Presentation (Kimery Vories, OSM)

- Comments/views provided are Mr. Vories' and are not those necessarily of OSM.
- Complimented EPA on the time, resources, and effort spent thus far on this issue, including site visits, damage case assessments, analyzing SMCRA, and looking at state programs.
- A fundamental problem is that EPA looks at the issue much differently than OSM. EPA seems to be viewing CCW minefilling as if the practice were similar to a solid waste landfill. OSM views the practice as a beneficial use as part of the mining and reclamation process (for such things as fill material, alkaline addition, soil amendment, and grouting material in underground mines to prevent AMD or subsidence). This is illustrated by the tables in the EPA reports that have categories corresponding to controls one would expect to find on a solid waste landfill.
- The perceived "gaps" in state programs are really just differences. These differences are due to how States administer their SMCRA programs. Some States have more specific requirements for CCW than others. However, the basic tenets of the State programs under SMCRA are the same and, as such, all address the categories delineated in the EPA reports.
- The SMCRA-based approach sets minimum performance standards with the key being that the Federal government establishes the minimum. If EPA develops a prescriptive regulation for CCW mine placement similar to that for solid waste landfills, it would eliminate all existing beneficial uses. An alternative would be to propose regulations to complement the performance standard approach of SMCRA, or conclude that new regulations are not needed because the activity can be sufficiently covered under SMCRA.
- Mr. Vories stated that OSM would probably be supportive of proposing changes to the SMCRA program, if the changes are based on facts. However, there is no evidence of a problem at SMCRA-regulated mine sites.

Reactions from the States

- In Pennsylvania, the solid waste and mining programs have worked together. The State questioned whether the SMCRA regulations look at items like ash characteristics and whether the SMCRA performance standards would address it. What does SMCRA consider to be toxic?
- In response, Mr. Vories stated that the SMCRA performance standard does not allow degradation of water quality, so the States should do whatever is needed to avoid that. This could mean an ash leachate test. The framework is there for States to determine if the CCW is toxic or benign in the context of the performance standards. Whether the ash is going back

to the mine as beneficial use or as disposal, the activity is subject to the performance standards under SMCRA.

- Bill Pounds, representing both ASTSWMO and Pennsylvania, stated that Pennsylvania has developed criteria for the type of CCW that can be beneficially used. However, minimum standards that are applicable nationwide may be needed. Not all States have the technical expertise to develop their own standards.
- The Navajo Nation emphasized the need for EPA oversight over mine placement of CCW.
- Texas expressed concern about coordination between mining and solid waste agencies in some States and the need for clear definition of which activities are subject to which jurisdiction.
- There also are concerns about the standards applicable at sites where SMCRA does not apply (e.g., non-coal mines, abandoned mine lands).
- EPA stated that the Agency has not decided whether a non-coal mine such as a quarry would be considered a mine or a landfill (there is a separate track for regulations regarding the disposal of CCW in landfills and surface impoundments).

Some suggestions were made about possible approaches:

- Exempt SMCRA-regulated sites and focus on addressing other sites.
- Exempt abandoned mine lands sites if they are managed under programs equivalent to SMCRA.
- In concert with States, develop science-based guidance for disposal and beneficial use of CCW on all non-SMCRA regulated mine sites.
- In concert with States, develop guidelines, not regulation, based on scientific research and based on the recommendations of experienced States.

Part IV: Overview of EPA's Program of Site Visits and Interviews

(Bonnie Robinson, EPA Office of Solid Waste)

EPA is conducting a program of site visits and interviews with individual state offices that regulate mine placement of CCW. The visits will include touring coal and non-coal mine sites and meeting with regulators to fully discuss their programs:

- EPA has already visited Illinois and the Navajo Nation and plans to visit seven other States by Spring 2002.
- The basis for selection of the States to be visited was:
  - Number of CCW minefill projects
  - Regional coverage
  - Non-coal mines minefill activity
  - Citizen complaints were not considered
- EPA has developed a detailed discussion guide with 12 areas of information to collect.

At this stage in EPA's regulatory determination process, the Agency is still gathering information. EPA has until March 2003 to develop its proposal. Regardless of what direction

the Agency chooses (regulate, don't regulate), they will need the data to support this choice and the visits are instrumental in providing this data – they have helped EPA to understand CCW placement practices and regulatory programs on a site-by-site basis.

Part V: EPA's Perspective on CCW Minefilling

(Truett Degeare, EPA Office of Solid Waste)

Truett Degeare acknowledged that EPA comes at the CCW minefilling issue from a different perspective than OSM – that of solid waste disposal as regulated under RCRA. While there are some similarities between RCRA and SMCRA (they were enacted by the same Congress), the Agency is still learning about the SMCRA program. It is clear that, like RCRA, a lot of the details are not spelled out in the statute, but implemented through authorized State programs. EPA appreciates the assistance thus far in the learning process.

To familiarize participants with EPA's perspective, Mr. Degeare provided them with a copy of the ground-water monitoring and corrective action portions of EPA's RCRA Part 258 regulations for non-hazardous, municipal solid waste landfills. He emphasized that, in presenting these regulations, EPA is not suggesting that this program is a model for CCW minefill regulation. The purpose of this exercise is only to identify for the States those concepts that the Agency has considered important in other regulatory contexts.

The following are some key components:

- RCRA focuses heavily on a federal-State partnership and the program depends on State involvement.
- Relevant point of compliance: States define where this should be; Part 258 requires only that it be within 150 meters of the waste management unit boundary.
- Ground-water monitoring systems: Part 258 describes what is appropriate in a ground-water monitoring system, including placement of wells, sampling and analytical procedures, chain of custody, etc.
- Tiered ground-water monitoring and analysis: Part 258 includes three levels of monitoring:
  - Semi-annual detection monitoring for indicator parameters.
  - Assessment monitoring, which is conducted if there is a statistically significant change found for the indicator parameters. This includes monitoring for additional parameters, establishing background concentrations, and establishing ground-water protection standards. If no further problems are found, a facility can return to detection monitoring.
  - Assessment of corrective measures, which is conducted if statistically significant exceedences of the ground-water protection standards are found. A key element here is public involvement – the facility must discuss results in a public meeting.
- Selection and implementation of corrective action: a corrective remedy should be selected based on consideration for potential risk to human health and the environment, consideration of potential future use of the aquifer, and interaction with the State agency and the public.

Corrective actions are complete when compliance with ground-water protection standards is achieved. Financial assurance for corrective action can then be released.

Reactions from the States

- IMCC commented that national ash characterization guidelines could be developed at the State level. States can help EPA build a data base in order to make decisions, as was successfully done with remining
- In Pennsylvania, ground-water monitoring standards, and requirements for ash placement and compaction were cited as examples of criteria that the mining and solid waste programs both agreed on.
- Virginia commented that EPA should focus on non-coal mine placement and defer to SMCRA for coal mine placement.
- ASTSWMO described positive results while working with EPA on guidance for non-hazardous industrial waste management and stated that this could be used as a model.

Part VI: State Round-Table Discussion

Greg Conrad asked each State to reflect on the following questions:
1) What is your perspective on where we are in the process and what it means to your State?
2) What is your reaction to the present data and information gathering process?
3) Where would you like to see the process go next?

Illinois

- Illinois has State laws that implement SMCRA for coal mines and also regulate non-coal mines effectively.
- It is important for EPA to recognize that States like Illinois and Pennsylvania have progressive programs. These programs have made self corrections as they have developed over the years, and they work well. Illinois would like to see the process accommodate the programs that currently exist and function well.
- Illinois agrees that there should be minimum requirements for approval of any type of placement at a coal mine site. These include characterizing the material, characterizing the site, and establishing points of compliance. Illinois uses State law to implement these requirements, but understands that other States may not have such law. Flexibility is important to accommodate ash-specific and site-specific conditions.
- Illinois appreciates that data collection is essential because EPA has to base its determination on science.
- Illinois would like EPA to identify any specific deficiencies they perceive and would like the opportunity to respond to these.

North Dakota

- North Dakota's Department of Health requires special use permits with design requirements, including clay liners, and monitoring requirements.
- Beneficial uses at mine sites are important and effective.
- North Dakota appreciates the need for data collection and understands that it will take time.
- EPA needs to collect data on more sites and involve the States to insure the data is accurate. For example, the North Dakota site included in the MRAM data is pre-regulation and may not reflect current practices.

Missouri

- Missouri is concerned that the focus has been too much on coal mine sites and not on non-coal mines, particularly since SMCRA regulates coal but not non-coal mines.
- In Missouri, while there is currently little non-coal mine placement, there also are no water monitoring requirements for non-coal mines.
- EPA should provide guidance on what data is needed for MRAM and direction on how to provide it.

Montana

- Montana is new to the placement of CCW in mine sites – there is only one small site in western Montana. The State found problems in down-gradient wells, but cannot attribute these to mine placement of CCW.
- CCW is exempt from solid waste regulation in Montana, so the practice must be regulated by the mining agency. The State may need a formal process soon, with the increasing emphasis on coal as an energy source. Currently, no guidelines or regulations in place.
- Montana is concerned that all of the available data is not reflected yet in MRAM.
- Montana appreciates any guidance that will help the State develop its program, but thinks that SMCRA provides sufficient authority to implement this program.

Pennsylvania - Mining

- Pennsylvania is fortunate in that the State has a pre-SMCRA program and a non-coal mine program that mimics SMCRA.
- Waste characterization is critical in Pennsylvania because CCW is received from both within and outside of the State with variability among sources (e.g., ash from western coals).
- Pennsylvania has extensive data to provide for MRAM, but it will require a visit from EPA to provide these data. Pennsylvania will have some comments on EPA's regulatory documents.
- In analyzing data, it is important to examine long-term trends and not focus on outliers.
- Pennsylvania would like to see some agreement on what to do next. This should be in the form of minimum guidelines that are acceptable to all parties and allow States to develop their own programs. No nationwide regulatory package will be able to account for the variability between States.
- It is critical that States not lose the capability to facilitate reclamation of mine lands using CCW.

Pennsylvania - Solid Waste (Also representing ASTSWMO)

- States are not interested in seeing another RCRA-like regulatory program, but guidance would be helpful for States, particularly those without developed programs. States do not want something that will override existing programs.
- Flexibility is important. Even within Pennsylvania, there are significant variations among sites. While Pennsylvania's requirements provide a minimum standard and allow for this variability, they are probably not appropriate for every State.
- Pennsylvania believes ash characterization is critical, because not all ash is appropriate for placement without controls.
- After data are collected, it is also important how the data are compared and analyzed. Individual peer review of the data should be applied to establish the data's validity.
- One concern is how the outcome of this process will be viewed by the public. The outcome should address the technical needs of the States and the concerns of the public. Just indicating that SMCRA incorporates performance standards will not address these concerns – the substance of the standards and how they are implemented must be articulated.

Texas - Solid Waste

- Texas believes the existing SMCRA and RCRA State programs are sufficiently protective. If EPA adds another layer of regulatory requirements, they risk losing the benefits of existing reuse/recycling projects.
- Texas understands that EPA must be able to respond to public concerns and needs the data to do so.
- Sufficient data exists to support exempting certain uses of CCW. The States and OSM are in a position to provide EPA with this data quickly.
- Additional thought is needed about how to address non-coal mines and abandoned mines.
- A good outcome would be one where States are allowed to demonstrate that their programs, regardless of whether they are under SMCRA or RCRA, are sufficient or meet certain specific guidelines.

Texas - Mining

- Texas would like to see data collection move forward as fast as possible to help EPA reach a decision point.
- Texas probably produces more CCW than any other State, although most is not placed in mines.
- Texas would like to see nationwide guidance on what constitutes a beneficial use of CCW.

Ohio

- It is unfortunate that this process is being driven by alleged problems, rather than proven problems.
- The site visits and data gathering are essential and Ohio believes they will lead to the conclusion that CCW is being properly managed.
- Ohio supports the States' discussion outline: exempting beneficial mine uses makes sense, and States should be allowed to define these beneficial uses.

- Furthermore, CCW disposal at mine sites should not be prohibited either, in order to save green space and avoid brownfields.
- Ohio is concerned about the potential for a national regulation because of the variations among States. For example, water table restrictions may be appropriate in one State but not in others. Existing SMCRA programs have been tailored to State conditions, so additional programs are not needed.

New York

- New York is concerned there is too much emphasis on coal mines, particularly when existing SMCRA mechanisms address those sites. New York is concerned that non-coal States will be left out of the process and left to develop programs on their own.
- New York has no coal mines, but lots of CCW and is allowing small-scale placement in non-coal mines under research and demonstration permits.
- New York has data on non-coal mine placement that should be examined and EPA should visit other non-coal mine States and sites.
- EPA should make a determination that mine placement of CCW is a beneficial use if it meets certain criteria. Until EPA makes this determination, large-scale placement will not be possible in New York. The State also is concerned that if EPA doesn't properly address non-coal mine placement, the practice will be prohibited.

Colorado

- Colorado is concerned that there is a misunderstanding on the part of environmental groups about actual CCW mine placement practices and regulations. Uncontrolled disposal is not occurring. Colorado, for example, has an effective SMCRA program and non-coal mine regulations that are similar to SMCRA.
- There are currently adequate State and federal regulations (NPDES, SDWA, SMCRA, RCRA, etc.), so that an additional one is not needed; we need only to clarify how the existing regulations apply and interact.
- If EPA is classifying use of CCW as structural fill, road base, and anti-skid material as beneficial uses, not to be regulated, why is mine placement being treated differently?
- EPA should rely on OSM's expertise for data on mine placement.
- Colorado has no problem providing data, as long as it will be used and characterized properly. Colorado will have some comments on EPA's regulatory documents.
- Before coming up with a new scheme, EPA should analyze what's in place (via existing statutes and regulations) and move forward only if there are problems or gaps. Regulation should not be based on a perceived problem.

Virginia

- The issue here appears to be a public perception problem, so the solution should be one of education, not regulation.
- Virginia has authorization under both SMCRA and RCRA and the mining program oversees all activities at mine sites, so there is no gap in regulation.
- EPA should determine what data is needed and work through OSM to obtain it.

- EPA should focus its efforts on non-SMCRA sites. If some problem is identified at SMCRA sites, EPA should work with OSM and the States to address it through guidelines, not regulation.

Oklahoma

- Oklahoma has sufficient means, through SMCRA for coal mines and through State statutes for non-coal mines, to handle disposal of CCW.
- Oklahoma does not yet have any placement in coal mines, although there has been one request.
- If there are specific areas that are not covered, these should be defined very specifically and addressed through guidelines only – for example, for ash characterization.

Maryland

- Maryland is not convinced there is a problem, but understands that EPA is not convinced either.
- Maryland would like assurances that EPA will use the data submitted by the States and use it properly.
- If, after looking at the data, EPA perceives there is a problem, States should be allowed to develop guidelines to address this with EPA comment. A national regulation is not needed.
- Defining the material as coal combustion waste creates a problem right away.
- Some mines have contractual obligations to haul back ash, so more regulation might conflict with this.
- EPA should show the States the data/information that makes EPA believe there is a problem; the States will then help EPA define the problem and develop a solution.
- Maryland submitted data to MRAM, but it doesn't appear to be included.
- Maryland uses the pollution prevention portion of NPDES program to control non-coal mine placement.
- SMCRA plus State programs adequately handle coal minefills.

South Carolina

- South Carolina is not a coal producing State, but has mechanisms in place through its solid waste program to manage CCW placement in non-coal mines.
- Such placement has not occurred yet, but South Carolina may have some useful data for EPA as a result of its waste classification system.
- As in the States' discussion outline, South Carolina would like to see EPA promote the use of CCW as a product (i.e., for cement).
- Whether CCW placement can be classified as a beneficial use should be predicated on characterization. It appears that everyone agrees that some CCW should not be used. Given this, attention to the analytical methods used for this characterization is required.
- The most efficient use of resources would be for EPA to use OSM's expertise in coal mining.
- The States should be involved in the interpretation of the data to make sure it is used correctly and not out of context.

- States must be allowed flexibility to manage their programs – they do not want anything that will minimize the use of CCW as a resource.

Navajo Nation

- The Navajo Nation has some specific concerns with CCW management practices on tribal lands. However, the Navajo Nation EPA has no program to specifically address this. EPA needs to recognize that the Navajo Nation does not have RCRA authority and will not in the future because the tribe is considered a municipality under RCRA.
- The Navajo Nation is interested in learning from the other States and is particularly interested in States, like Montana, that are currently developing programs.
- The Navajo Nation agrees that EPA is looking at mine placement from a waste disposal perspective. The dilemma is how to balance protective requirements with recycling consistent with the objective of RCRA..
- EPA should also talk with the Pueblo Zuni (New Mexico), another tribe that is about to develop a coal mine, in this process.
- Waste characterization should determine how CCW is managed and monitored and the Navajo Nation supports issuing guidelines on waste characterization.
- If EPA does come up with regulations, the Navajo Nation will need additional resources to implement them.

West Virginia

- West Virginia has spent considerable time defining beneficial uses and determined that ash characterization is very important. There are certain classes of CCW that are not appropriate for mine placement.
- There are plenty of regulatory vehicles in place right now. What is needed is to clarify the interaction of these to determine if they are adequately and consistently applied.
- The existing regulations and the best available data need to be examined before anyone determines what else is needed.

Summary

IMCC provided the following summary of the roundtable comments:

Perspective on Status:

- SMCRA is an adequate baseline
- Examine the effectiveness of existing State programs before adding more regulations.
- Need to coordinate among all applicable statutes/regulations (e.g., SMCRA, RCRA, CWA, SDWA).
- Absolute need for flexibility to accommodate differences among States.
- Focus on both coal and non-coal sites (there may be value to a segmented approach to discussions).

Suggested Next Steps:

- Update/revise the MRAM database and EPA's State regulatory reports using State input regarding use and analysis. This is critical to EPA being able to further articulate direction.
- Consider developing national guidelines, not as a substitute for current programs but as a gap-filling/baseline measure.
- Identify differences among existing State programs/approaches.
- Strive for consensus regarding beneficial use of CCW versus disposal.
- EPA and OSM analysis of inter-related statutory/regulatory requirements.
- Clarify, define, and articulate the "problem" we are "fixing" — EPA and OSM need to better coordinate this in light of their data.

Part VII: Review and Discussion of States' Outline of Coal Ash Management

Mr. Conrad explained that the State's draft discussion outline for coal ash management was born out of the need to categorize the different types of coal ash management – the first three are beneficial uses and the fourth is disposal. The document emphasizes the experience of the States with their laws and assumes there is a difference between how a program would approach beneficial use versus disposal. The purpose is to define certain uses that are exempt – not altogether exempt from regulation, but exempt from solid waste regulation. The outline also highlights the importance of data and information efforts.

EPA commented that regardless of whether a practice is termed disposal or beneficial use, one should be concerned with waste characteristics and ensuring environmental protection.

OSM commented that the distinction is not relevant where SMCRA applies, because the SMCRA environmental performance standards apply no matter how the practice is defined. States are free, however, to make the distinction as long as the result does not circumvent the SMCRA performance standards. Such a distinction might be appropriate for States in determining what they want to regulate as a landfill and what they want to regulate under SMCRA alone.

A State inquired of OSM whether SMCRA's performance standards extend into characterization of the waste. OSM responded that if materials are potentially toxic-forming, they must be controlled so they don't harm the environment. The permittee must submit data and plans to convince the permitting authority that the placement of CCW will not degrade the environment.

Mr. Conrad then asked the States to comment on their comfort level with the discussion outline, if, as a hypothetical, EPA took it to their management to illustrate what the States are thinking. The States raised no objections.

EPA commented that the outline would raise a lot of questions from management because many critical issues lie within the details that are not included in the outline. EPA further stated that they didn't necessarily want details to the outline but would welcome:

1) more details on State regulatory programs that currently address CCW minefilling,
2) corrections to the EPA's State regulatory reports, and
3) comments on whether the categories in the reports are really what is needed and if there are elements of your program that EPA is missing.

One State questioned whether is it safe to assume that the categories included in the State regulatory reports form what would be a satisfactory program to EPA. EPA explained that the categories reflect elements EPA has included in previous regulations and which EPA has observed to be in State programs; thus, on a preliminary basis, yes this was an accurate assumption.

Part VIII: Next Steps

- Review and discussion of revised EPA State regulatory reports. States should submit their comments on the reports to EPA by **January 1, 2002**. OSM offered to provide comments by January 31, 2002. EPA will attempt to issue revised reports by March 1, 2002.
- States should provide MRAM data and information to EPA (Mike Clipper) as soon as possible. There will be an update on the MRAM project at the next meeting.
- States should ideally have an opportunity to review full MRAM State reports before the next meeting.
- Develop prototype guidelines for beneficial use or ash characterization (depends on the results of the first two bullets). To aid this process, States were asked to provide their guidelines to EPA (if they haven't done so already). Consider developing a discussion outline to accompany any prototype guidelines, addressing such issues as components, use, definitions, etc.
- Review/revise State's Outline of Coal Ash Management. States request EPA's reaction and opinion on what is needed to make it acceptable at least 30 days before the next meeting.
- Next meeting is tentatively scheduled for **April 15th and 16th in Golden, Colorado**. It would occur at the beginning of the OSM Coal Ash Symposium — all-day on Monday and a half-day on Tuesday. This is a week before IMCC's annual meeting.