



National Rural Electric
Cooperative Association
A Touchstone Energy® Cooperative

FAST FACTS

Coal Combustion Residuals Legislation

Background: Coal Combustion Residuals (CCRs) are byproducts of burning pulverized coal for generating electricity and are used beneficially in a variety of applications including the manufacture of concrete, drywall and other construction products. With approximately forty percent of CCRs being recycled, beneficial use has become an important sector of the economy providing jobs while providing environmental benefits. Beneficial use of CCRs reduces greenhouse gas emissions, extends the life and durability of the nation's roads and bridges and reduces CCR disposal in landfills or surface impoundments.

The question of how best to regulate the disposal of CCRs (those that cannot be beneficially reused) under the federal Resource Conservation and Recovery Act (RCRA) has long been contentious for the U.S. Environmental Protection Agency (EPA). Congress, recognizing that hazardous regulatory treatment of CCRs should be the option of last resort, enacted the Bevill Amendment to RCRA in 1980. The Bevill Amendment prevents EPA from regulating CCRs as hazardous, unless the EPA first determines that such regulation is warranted based on a study and report to Congress. EPA completed the Bevill Amendment process, and in two prior reports to Congress and two related regulatory determinations, found that CCRs do not warrant hazardous regulation under RCRA Subtitle C.

Status: On December 19, 2014, EPA's long awaited CCRs rule became final providing for nonhazardous regulation pursuant to Subtitle D of RCRA. While NRECA supports EPA's decision to regulate CCRs as nonhazardous, the agency made clear in the preamble to the rule it will continue evaluating whether to reverse its prior Bevill regulatory determination. Legislation is needed to codify EPA's determination that coal ash is nonhazardous to prevent this question from coming up for review every three years as set forth under current law. This would provide certainty for the regulated community, stabilize beneficial reuse markets and affirm EPA's determination that nonhazardous regulation of CCRs is sufficiently protective of human health and the environment.

Because RCRA does not give EPA authority to directly regulate nonhazardous waste, the final rule is self-implementing, meaning that it does not provide for the issuance of permits or enforcement by a regulator. Rather, owners and operators of facilities subject to the rule certify compliance with no regulatory oversight. EPA has no authority to require States to implement the federal minimum criteria, and to the extent a State willingly incorporates the federal criteria into its solid waste management program, the

federal rule remains in place as a parallel federal program. The end result will be dual, and potentially inconsistent, federal and state regulatory requirements for CCRs.

The only compliance mechanism under the final rule is through RCRA citizen suits, so legal disputes regarding compliance will be determined on a case by case basis by various federal district courts likely leading to inconsistent decisions regarding the scope and applicability of the federal rule. Regulatory agencies are better equipped to carry out compliance because they have the expertise to handle the application of highly technical standards and the ability to ensure uniform application of the law.

Legislation is necessary to facilitate implementation of EPA's final rule by providing authority for states to establish enforceable nonhazardous permit programs and to vest EPA with authority to administer permit programs in States with deficient programs. Doing so will make state and federal requirements consistent and place the reins of enforcement in the hands of state regulators or EPA. Citizens will retain the ability to challenge permitting and compliance decisions because the legislation in no way affects their ability to bring suit under RCRA.

NRECA Position: Please urge your Representative to co-sponsor the Improving Coal Combustion Residuals Regulation Act sponsored by Congressman David McKinley. The bill makes permanent EPA's decision to regulate CCRs in a nonhazardous manner while providing much-needed certainty to beneficial users and the regulated community. The bipartisan legislation properly balances the interest of public health and the need of electric cooperatives to deliver affordable and reliable electricity.

For more information
John Cassady, NRECA
703.907.5839
john.cassady@nreca.coop
<http://www.nreca.coop>



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