

specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address any concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing sodium carbonate; weak mineral bases.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL-7357-9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA can expeditiously reach decisions for pesticides like sodium carbonate; weak mineral bases, which pose no risk concerns, have low use, affect few if any stakeholders, and require no risk mitigation. Once EPA assesses uses and risks for such low risk pesticides, the Agency may go directly to a decision and prepare a document summarizing its findings, such as the sodium carbonate; weak mineral bases RED.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public in finding ways to effectively mitigate pesticide risks. Sodium carbonate; weak mineral bases, however, poses no risks that require mitigation. The Agency therefore is issuing the sodium carbonate; weak mineral bases RED, its risk assessments, and related support materials simultaneously for public comment. The comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for sodium carbonate; weak mineral bases. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

EPA will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA

also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the sodium carbonate; weak mineral bases RED will be implemented as it is now presented.

#### *B. What is the Agency's Authority for Taking this Action?*

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

#### **List of Subjects**

Environmental protection, Pesticides and pests, sodium carbonate; weak mineral bases.

Dated: August 9, 2007.

**Frank Sanders,**

*Director, Antimicrobials Division, Office of Pesticide Programs.*

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#### **ENVIRONMENTAL PROTECTION AGENCY**

**[EPA-HQ-RCRA-2006-0796; FRL-8462-2]**

**RIN 2050-AE81**

#### **Notice of Data Availability on the Disposal of Coal Combustion Wastes in Landfills and Surface Impoundments**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Data Availability.

**SUMMARY:** This notice announces the availability of new information and data contained in three documents that the Agency is requesting public comments on concerning the management of coal combustion wastes (CCW) in landfills and surface impoundments. The Agency is seeking public comments on how, if at all, this additional information should affect the Agency's decisions as it continues to follow-up on its Regulatory Determination for CCW disposed of in landfills and surface impoundments. The three documents that the Agency is requesting comment on include: a joint U.S. Department of Energy (DOE) and EPA report entitled, *Coal Combustion Waste Management at Landfills and Surface Impoundments, 1994-2004*; a draft risk assessment conducted by EPA on the management

of CCW in landfills and surface impoundments; and EPA's damage case assessment. The Agency solicits comments on the extent to which the damage case information, the results of the risk assessment, and the new liner and ground water monitoring information from the DOE/EPA report should affect the Agency's decisions. EPA is also requesting direct comment on the draft risk assessment document to help inform a planned peer review. In addition, the Agency has included in the Docket to this Notice of Data Availability (NODA) a rulemaking petition submitted by a number of citizens' groups and several approaches, one prepared by the electric utility industry and the other prepared by a number of citizens' groups, regarding the management of CCW. The Agency will consider all the information provided through this notice, the comments and new information submitted on this notice, as well as the results of a subsequent peer review of the risk assessment as it continues to follow-up on its Regulatory Determination for CCW disposed of in landfills and surface impoundments.

**DATES:** Submit comments on or before November 27, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-RCRA-2006-0796, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- E-mail: Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov*, Attention Docket ID No. EPA-HQ-RCRA-2006-0796. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.
- Fax: Comments may be faxed to 202-566-0272. Attention Docket ID No. EPA-HQ-RCRA-2006-0796.
- Mail: Send two copies of your comments to Notice of Data Availability on the Disposal of Coal Combustion Wastes in Landfills and Surface Impoundments, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Attention

Docket ID No. EPA-HQ-RCRA-2006-0796.

- **Hand Delivery:** Deliver two copies of your comments to the Notice of Data Availability on the Disposal of Coal Combustion Wastes in Landfills and Surface Impoundments Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Attention Docket ID No. EPA-HQ-RCRA-2006-0796. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-RCRA-2006-0796. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as

copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Notice of Data Availability on the Disposal of Coal Combustion Wastes in Landfills and Surface Impoundments Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566-0270. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744.

**FOR FURTHER INFORMATION CONTACT:**

Alexander Livnat, Office of Solid Waste (5306P), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0002, telephone (703) 308-7251, e-mail address [livnat.alexander@epa.gov](mailto:livnat.alexander@epa.gov). For more information on this rulemaking, please visit <http://www.epa.gov/epaoswer/other/fossil/index.htm/>.

**SUPPLEMENTARY INFORMATION:**

**I. What Should I Consider as I Prepare My Comments for EPA?**

1. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

2. *Docket Copying Costs.* The first 100-copied pages are free. Thereafter, the charge for making copies of Docket materials is 15 cents per page.

**II. How Should I Submit CBI to the Agency?**

Do not submit information that you consider to be CBI electronically through <http://www.regulations.gov> or by e-mail. Send or deliver information identified as CBI only to the following address: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-RCRA-2006-0796. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed, except in accordance with procedures set forth in 40 CFR Part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please contact: LaShan Haynes, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0002, telephone (703) 605-0516, e-mail address [haynes.lashan@epa.gov](mailto:haynes.lashan@epa.gov).

**III. Disposal of CCW in Landfills and Surface Impoundments**

*A. Background*

In May 2000, EPA published its Final Regulatory Determination on Wastes From the Combustion of Fossil Fuels (65 FR 32214). The Agency concluded that these wastes do not warrant regulation under Subtitle C of RCRA and, therefore, retained the hazardous waste exemption of RCRA section 3001(b)(3)(C). We also determined, however, that national regulations under Subtitle D of RCRA were appropriate for coal combustion wastes (referred to as CCW throughout this

notice) when disposed of in landfills or surface impoundments.<sup>1</sup>

Specifically, EPA's determination to develop regulations under Subtitle D of RCRA was based on a factual record developed prior to 1995 which led to the following considerations: (i) The constituents present in these wastes include metals, such as arsenic, cadmium, chromium, lead and mercury, that could present a danger to human health and the environment under certain conditions; (ii) while testing of the CCW using the toxicity characteristic leaching procedure (TCLP) rarely exceeds the hazardous waste toxicity characteristic (or TC), the Agency identified eleven documented cases of proven damages<sup>2</sup> to human health and/or the environment by improper management of these wastes in landfills and surface impoundments; (iii) at the time the Regulatory Determination was made, between 40 and 70 percent of CCW disposal sites lacked controls, such as liners and/or ground water-monitoring; and (iv) while there had been substantive improvements in state regulatory programs, the Agency also identified gaps in state oversight. In deciding to pursue Subtitle D in lieu of Subtitle C regulation, the decisive factors which guided the Agency's thinking at that time included the improving trends in disposal and utilization practices, and the current and potential utilization of

the wastes, which the Agency believes it should encourage.

### *B. Additional Information on Management of CCW in Landfills and Surface Impoundments*

Since EPA issued the 2000 Regulatory Determination, which was based on information collected prior to 1995, additional information and data have become available that we believe should be considered as part of the Agency's evaluation regarding the development of regulations under Subtitle D of RCRA for CCW. Therefore, today's Notice of Data Availability (NODA) is soliciting public comment on how, if at all, the following additional information and data should affect the Agency's decisions as it continues to follow-up on its Regulatory Determination for CCW disposed of in landfills and surface impoundments: (1) A joint U.S. Department of Energy (DOE) and EPA report entitled, *Coal Combustion Waste Management at Landfills and Surface Impoundments, 1994–2004*; (2) a draft risk assessment conducted by EPA on the management of CCW in landfills and surface impoundments; and (3) EPA's recently completed damage case assessment. EPA is also seeking direct comment on the draft risk assessment document to help inform a planned peer review. In addition, the Agency is also including in the docket to today's NODA a February 2004 Petition for Rulemaking submitted by the Clean Air Task Force and the Hoosier Environmental Council, jointly with a number of citizens' groups to Prohibit the Placement or Disposal of CCW into Groundwater and Surface Water; and two suggested approaches for managing CCW in landfills and surface impoundments. One approach is a Voluntary Action Plan that was formulated by the electric utility industry through their trade association, the Utility Solid Waste Activities Group (USWAG).<sup>3</sup> The second approach is a proposed framework prepared by a number of citizens' groups<sup>4</sup> for federal

regulation of CCW disposed of in landfills and surface impoundments under Subtitle D of RCRA generated by U.S. coal-fired power plants. The Agency is making these documents available in the Docket to allow all interested parties to be aware of the various documents that EPA will consider as it continues to follow up on its Regulatory Determination for CCW disposed of in landfills and surface impoundments.<sup>5</sup>

These documents are available for review and downloading through the docket for today's action (see the **ADDRESSES** section above for instructions on accessing this information from the docket). The remainder of this notice briefly describes the various documents that are being made available for review and/or comment.

#### 1. DOE/EPA Report

In reaching its determination in May 2000 to develop national Subtitle D regulations under RCRA for the management of CCW in landfills and surface impoundments, the Agency generally relied on information and data on industry practices that were available prior to 1995. For information on industry practices, the Agency based its Regulatory Determination on information contained in a report prepared by the Electric Power Research Institute (EPRI)<sup>6</sup> addressing waste management units that were constructed between 1985 and 1995. The Agency, however, recognized that the electric utility industry was changing its management practices. Therefore, in 2005, DOE and EPA conducted a joint study to collect more recent information on CCW management practices by the electric power industry. Specifically, this report presents information and data on CCW disposal practices and state regulatory requirements at landfills and surface impoundments that were permitted, built, or laterally expanded between January 1, 1994, and December

Center, San Juan Citizens Alliance, Clean Wisconsin, Residents Against the Power Plant, Ohio Valley Environmental Coalition, Neighbors for Neighbors, Delaware Riverkeeper Network, Healthlink, Wenham Lake Watershed Association, Coal River Mountain Watch, Dakota Resource Council and Save Us From Future Environmental Risks.

<sup>5</sup> In addition, the Agency is also placing in the docket to today's NODA comments that the Clean Air Task Force and the Hoosier Environmental Council submitted to EPA as Attachment 1 to a July 12, 2005 letter to Thomas P. Dunne, then Acting Assistant Administrator for the Office of Solid Waste and Emergency Response (OSWER) on the electric utility industry's Voluntary Action Plan.

<sup>6</sup> Coal Combustion By-Products and Low-Volume Wastes Co-management Survey, Draft Report, EPRI, June 1997.

<sup>1</sup> In addition, EPA determined that regulations under Subtitle D of RCRA and/or modifications to the existing regulations established under authority of the Surface Mining Control and Reclamation Act (SMCRA) were appropriate when these wastes are used to fill surface or underground coal mines. As recommended in a recent National Academy of Sciences Report entitled, "Managing Coal Combustion Residues in Mines," National Research Council of the National Academies, 2006, EPA will be collaborating with the U.S. Department of Interior, Office of Surface Mining (OSM) to develop national standards for the placement of CCW in coal mines. A separate notice was issued by OSM regarding this effort (see 72 FR 12026, March 14, 2007; available at <http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-4669.pdf>).

<sup>2</sup> Per the May 2000 Regulatory Determination, 65 FR 32224 and Section 1.4.4 of the 1999 Report to Congress, proven damage cases are those with (i) documented exceedances of primary MCLs or other health-based standards measured in ground water at sufficient distance from the waste management unit to indicate that hazardous constituents have migrated to the extent that they could cause human health concerns, and/or (ii) where a scientific study demonstrates there is documented evidence of another type of damage to human health or the environment (e.g., ecological damage), and/or (iii) where there has been an administrative ruling or court decision with an explicit finding of specific damage to human health or the environment. In cases of co-management of CCWs with other industrial waste types, CCWs must be clearly implicated in the reported damage.

<sup>3</sup> USWAG members include approximately 80 utility companies, the Edison Electric Institute (EEI), the Natural Rural Electric Association (NRECA), the American Public Power Association (APPA), and the American Gas Association (AGA) and represent more than 85% of total U.S. electric generating capacity.

<sup>4</sup> The proposed framework was jointly prepared by Earthjustice, Clean Air Task Force, Environmental Integrity Project, Sierra Club, Natural Resources Defense Council, Waterkeeper Alliance, Hoosier Environmental Council, Public Citizen, Jefferson Action Group, Dine CARE, Army for a Clean Environment, Plains Justice, Appalachian Center for the Economy and the Environment, People in Need of Environmental Safety, Valley Watch, West Virginia Highlands Conservancy, Montana Environmental Information

31, 2004.<sup>7</sup> The scope of the study excluded waste units that manage CCW in active or abandoned coal mines.

Data in the report on recent and current disposal practices were derived from a survey conducted by USWAG of its members. In addition, EPA supplemented and checked the accuracy of this information by directly contacting state agencies, as well as a limited number of individual electric utilities.

In summary, the report shows an increase in the number of CCW disposal units with respect to liner design and ground water monitoring since 1994. Based on 100% member-response to USWAG's survey, plus EPA's fact-finding efforts, the report identified 56 new CCW management units, of which 38 are landfills, and 18 are surface impoundments. This number, however, does not reflect the total number of new CCW disposal units that were permitted, built or laterally expanded between 1994 and 2004. The study utilized proxy data to derive an estimate of the total number of new units. The first proxy was the tonnage of CCW available for disposal in States that have coal-fired power plant capacity, and the second was the coal-fired generating capacity of electric utilities owning the identified disposal units. The estimated net disposable CCW<sup>8</sup> in the 19 states where new units were identified was then compared with the total net disposable CCW in all states with coal-fired electric generating capacity. Using this approach, it was estimated that the number of identified new CCW management units represents between 64% and 71%, respectively, of the total number of new units established between 1994 and 2004.

The report identified that the use of liners and ground water monitoring at new landfills and surface impoundments built since 1994 has increased with 98% having liners and 91% having ground water monitoring. This compares with liners installed in 75% of landfills and 60% of surface impoundments built between 1985 and 1995; and with ground water monitoring installed at 88% of landfills and 65% of surface impoundments that were established between 1985 and 1995. In

addition, the frequency of dry handling in landfills appears to have increased, compared to wet handling in surface impoundments; approximately two-thirds of the new units are landfills, while the other one-third are surface impoundments. The Agency solicits comments and information on the amount or percentage of CCW that is expected to be managed in the future in landfills as opposed to surface impoundments. The percentage of composite liners has also increased for landfills from about 10%, as reported in the 1999 Report to Congress (RTC)<sup>9</sup> to 53% for new units constructed between 1994 and 2004, and for surface impoundments, from 2% as reported in the 1999 RTC to 50% for new units constructed between 1994 and 2004. The number of unlined units currently in operation in the U.S. is not known. The DOE/EPA 2006 Report also provides information from a review of eleven States' CCW programs, including the regulatory designation of CCW for disposal, permitting requirements, liner requirements, ground water-monitoring requirements, and leachate collection requirements.

The Agency requests comments with supporting data on how the findings of the DOE/EPA report should affect the Agency's decision regarding the regulation of CCW in landfills and surface impoundments under RCRA Subtitle D.

## 2. EPA's Risk Analysis Data

As part of the rulemaking process for making the May 2000 Regulatory Determination for CCW, EPA prepared a draft quantitative risk assessment. However, because time constraints precluded the Agency from addressing public comments on the draft study, EPA did not use the draft risk assessment in making its Regulatory Determination; rather it relied on the damage cases identified. Between 2000 and 2006, EPA addressed public comments and updated the risk assessment for the management of CCW in landfills and surface impoundments.

The purpose of the risk assessment is to identify CCW constituents, waste types, liner type, receptors, and exposure pathways with potential risks and to provide information that EPA can use as it continues to follow-up on its Regulatory Determination for CCW disposed of in landfills and surface impoundments. The risk assessment was designed to develop national

human and ecological risk estimates that are representative of onsite CCW management settings throughout the United States.<sup>10</sup>

To assess the risks posed by the onsite management of CCW, this risk assessment estimates the release of CCW constituents from landfills and surface impoundments, estimates the concentrations of these contaminants in environmental media surrounding coal-fired utility power plants, and estimates the risks that these concentrations pose to human and ecological receptors. The risk assessment does not address risks that may be due to direct discharges of CCW pollutants to surface waters, which are covered under the National Pollutant Discharge Elimination System (NPDES) program.

The risk analysis includes a full-scale Monte Carlo analysis; however, constituent screening results also are presented as part of the problem formulation discussion, along with a summary of the screening methodology. The full-scale analysis is designed to characterize five waste management scenarios that are defined by two waste management options (CCW disposal at power plant sites in landfills and surface impoundments) and three waste types, as follows:

- Conventional CCW, including fly ash, bottom ash, boiler slag, and flue gas desulfurization (FGD) sludge, which are typically co-disposed in landfills and surface impoundments;
- CCW co-disposed with coal refuse in landfills and surface impoundments, which can result in more acidic disposal conditions than conventional CCW monofills; and,
- Fluidized-bed combustion (FBC) wastes, including fly ash and bed ash. FBC wastes differ from conventional wastes because the limestone mixed during fluidized bed combustion tends to make the FBC waste more alkaline. FBC wastes are only disposed of in landfills in the United States and therefore, the Agency did not model the management of FBC wastes in surface impoundments.

These three waste types provide a good representation of waste disposal practices and the waste chemical conditions that impact the release of CCW constituents from landfills and surface impoundments.

To identify the CCW constituents and exposure pathways to be addressed in this risk analysis, the Agency relied on

<sup>7</sup> A draft of this report was peer reviewed by the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), the Utility Water Act Group (UWAG), and the Clean Air Task Force (CATF). Comments received on the draft report, which are included in the docket to today's NODA, have been considered and addressed by DOE and EPA in the final report entitled, *Coal Combustion Waste Management at Landfills and Surface Impoundments, 1994-2004*.

<sup>8</sup> Net disposable CCW is the total CCW generated minus CCW beneficially used.

<sup>9</sup> Wastes from the Combustion of Fossil Fuels, Volume 2: Methods, Findings and Recommendations, EPA-R-99-010, 1999 available at [http://www.epa.gov/epaoswer/other/fossil/volume\\_2.pdf](http://www.epa.gov/epaoswer/other/fossil/volume_2.pdf).

<sup>10</sup> Because the main technical aspects of the CCW risk assessment were completed in calendar year 2003, the newly collected information from the DOE/EPA report on the 56 new waste management units has not been incorporated into the database utilized for the risk assessment.

a 2003 CCW database assembled over several years to characterize whole waste and waste leachate from CCW disposal sites across the country. The 2003 CCW constituent database includes all of the CCW characterization data used by EPA in its previous risk assessments supplemented with additional data collected from public comments, data from EPA regions and state regulatory agencies, industry submittals, and literature searches.

Also, as noted in footnote 10, because the main technical aspects of the CCW risk assessment were completed in 2003, the newly collected information from the more recent DOE/EPA report on the 56 new waste units established between 1994 and 2004 was not part of the database used in characterizing the CCW landfills and surface impoundments modeled in the risk assessment. The risk assessment reflected management of CCW in both lined and unlined units as part of a Monte Carlo probabilistic risk analysis. Information on lined and unlined units was derived from facility data from a 1995 industry survey.

Specific findings of the risk assessment, from the Monte Carlo analyses of both lined and unlined units, include:

- The 90th and 50th percentile risks for those units (both landfill and surface impoundments) that had a composite liner were below a cancer risk of  $10^{-5}$  and an HQ of 1 for all constituents, waste management scenarios, and exposure pathways modeled in the CCW risk assessment.

- For humans exposed via the ground water to drinking water pathway, arsenic and thallium show risks to human health above the risk criteria for unlined and clay-lined CCW landfills. Arsenic poses a 90th percentile cancer risk of  $5 \times 10^{-4}$  for unlined units and  $2 \times 10^{-4}$  for clay-lined units (The 90th percentile arsenic cancer risk from this risk assessment of landfilled CCW falls within the range that EPA established for the arsenic MCL (i.e., 1 to 6 excess cancers in a population of 10,000 individuals)). Thallium shows a 90th percentile noncancer HQ of 3 for unlined units only. The 50th percentile results for this pathway are at or below the risk criteria for all constituents.<sup>11</sup> Other landfill constituents did not show a noncancer risk above an HQ of 1 or risk level of 1 chance in 100,000 excess cancer risk.

- Risks are higher for surface impoundments for the groundwater-to-

drinking-water pathway, with a 90th percentile arsenic cancer risk of  $9 \times 10^{-3}$  for unlined units and  $3 \times 10^{-3}$  for clay-lined units. For unlined units, five additional constituents have noncancer HQs ranging from 3 to 5 for the 90th percentile, including boron, lead, cadmium, cobalt, and molybdenum. Two constituents (boron (2) and molybdenum (3)) have HQs greater than 1 for clay-lined surface impoundments. The 50th percentile cancer risk results for arsenic are  $3 \times 10^{-4}$  in unlined units and  $9 \times 10^{-5}$  in clay lined surface impoundments.

- For arsenic, arrival times of the peak concentrations at a receptor well are relatively long for CCW landfills, with travel times ranging from hundreds to thousands of years. Arrival times are much shorter for surface impoundments, with time to peak concentrations being less than 100 years for most of the model runs.

- For humans exposed via the groundwater-to-surface-water (fish consumption) pathway, selenium (HQ = 2) and arsenic (cancer risk =  $2 \times 10^{-5}$ ) show 90th percentile risks for unlined surface impoundments above the risk criteria. All other waste management scenarios and all 50th percentile results show risks at or below the risk criteria for the fish consumption pathway.

- Liners appear to reduce risks from all constituents for landfills and surface impoundments. The risks from clay-lined units (as modeled in the risk assessment) were reduced by about half when compared to unlined units. Composite liners appear to be effective in mitigating CCW risks from landfills and surface impoundments.

- For ecological receptors exposed via surface water, the 90th percentile risks for unlined and clay-lined landfills exceed an HQ of 1 for boron (200) and lead (4). For surface impoundments, 90th percentile risks for six constituents: boron (2000), lead (20), arsenic (10), selenium (10), cobalt (5), and barium (2) exceed an HQ of 1. The only exceedance from the 50th percentile risk results is HQ of 4 for boron in surface impoundments.

- For ecological receptors exposed via sediment, 90th percentile risks for lead, arsenic, and cadmium exceeded an HQ of 1 for both landfills (HQs from 2 to 20) and surface impoundments (HQs from 20 to 200). All 50th percentile results show ecological risks at or below the risk criteria for the sediment pathway.

The Agency is making the risk analysis document available in the Docket to allow interested parties to submit comments on the analytical methodology, data, and assumptions used in the analysis and to submit

additional information for the Agency to consider. In addition, the risk assessment will undergo independent scientific peer review by experts outside of the EPA following closure of the public comment period. Public comments will be made available to the peer reviewers for their consideration during the review process. The peer review will focus on technical aspects of the analysis, including the construct and implementation of the Monte Carlo analysis, the selection of models to estimate the release of constituents found in CCW from landfills and surface impoundments, and their subsequent fate and transport in the environment, and the characterization of risks resulting from potential exposures to human and ecological receptors.

### 3. EPA Damage Case Assessment

For the May 2000 Regulatory Determination, the Agency determined there were approximately 300 CCW landfills and 300 CCW surface impoundments used by 440 coal-fired utilities. EPA recently completed an assessment of possible environmental damages from CCW landfills and surface impoundments. Under the Bevill Amendment for the "special waste" categories, EPA was statutorily required to examine "documented cases in which danger to human health or the environment has been proved." The criteria used to determine whether danger to human health and the environment has been proved are briefly described in footnote 2 to this NODA and more fully explained in the May 2000 Regulatory Determination at 65 FR 32224.

EPA has gathered or received information on 135 possible damage cases. Sixteen of these were submitted since publication of the 2000 Regulatory Determination. EPA re-evaluated the old damage cases and evaluated the new cases, and they are available in the docket to today's action and subject to comment as part of the NODA. After reviewing these 135 damage cases, EPA identified 24 proven damage cases. Sixteen were determined to be proven damages to ground water and eight were determined to be proven damages to surface water and covered by the National Pollutant Discharge Elimination System (NPDES) under the Clean Water Act.<sup>12</sup> The overwhelming majority of the damage cases reflect management in unlined units—that is, all but one of the 24 proven damage cases involved unlined CCW

<sup>11</sup> The risk analysis presents the corresponding 50th percentile results from the Monte Carlo analyses.

<sup>12</sup> Of the 24 damage cases, 11 were presented and discussed in the May 2000 Regulatory Determination.

management units,<sup>13</sup> including six cases involving disposal of CCW in unlined sand and gravel pits. Additionally, 43 cases were determined to be potential damages to ground water or surface water.<sup>14</sup> Four of the potential damage cases were attributable to oil combustion wastes.

Six of the alleged damage cases were minefills which, while under the scope of the 2000 Regulatory Determination, are outside the scope of this NODA that deals exclusively with surface disposal.<sup>15</sup> The remaining 62 alleged damage cases subject to detailed assessment were not considered damage cases due to either (1) lack of any evidence of damage, or (2) lack of evidence that damages were uniquely associated with CCW.

Of the 16 proven cases of damages to ground water, the Agency has been able to confirm that corrective actions have been completed in six cases and are ongoing in nine cases. The Agency has not received information regarding the one remaining case. Corrective action measures at these CCW management units vary depending on site specific circumstances and include formal closure of the unit, capping, the installation of new liners, ground water treatment, ground water monitoring, and combinations of these measures.

For a more detailed description, see the document [CCW\\_Damage\\_Case\\_Assessments.pdf](#) in the docket to today's action. Detailed information on many of these sites is also available in the docket for the 1999 Report to Congress, Docket ID # EPA-HQ-RCRA-1999-0022. The Agency solicits comments and supporting information on the extent to which the damage case information should affect the Agency's decisions regarding the regulation of CCW in landfills and surface impoundments under RCRA Subtitle D.

#### 4. Additional Documents

In addition to the reports identified under (1) to (3) above, the Agency is also including in the docket to today's NODA a February 2004 Petition for Rulemaking submitted by the Clean Air Task Force and the Hoosier Environmental Council, jointly with a number of citizens' groups to Prohibit

the Placement or Disposal of CCW into Groundwater and Surface Water; and two suggested approaches for managing CCW in landfills and surface impoundments. One approach is a Voluntary Action Plan that was formulated by the electric utility industry through their trade association, USWAG, regarding the management of CCW. The second approach is a proposed framework prepared by a number of citizens' groups for federal regulation of CCW disposed of in landfills and surface impoundments under Subtitle D of RCRA generated by U.S. coal-fired power plants.

#### C. Conclusion

The Agency solicits comments on the extent to which the damage case information, the results of the risk assessment, and the new liner and ground water monitoring information should affect the Agency's decisions. The Agency will consider all the information provided through today's notice, the comments and new information submitted on this notice, as well as the results of the peer review of the risk assessment as it continues to follow-up on its Regulatory Determination for CCW disposed of in landfills and surface impoundments.

Dated: August 23, 2007.

**Susan Parker Bodine,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

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## FEDERAL COMMUNICATIONS COMMISSION

### Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The following applicants filed AM or FM proposals to change the community of license: ABLE RADIO CORPORATION, Station NEW, Facility ID 170953, BNPH-20070403ACO, From AGUILA, AZ, To TONOPAH, AZ; ADVANCE ACQUISITION, INC., Station KQJZ, Facility ID 160700, BMP-20070725ALN, From KALISPELL, MT, To EVERGREEN, MT; AMERICAN EDUCATIONAL BROADCASTING, INC., Station KLKA, Facility ID 82692, BMPED-20070803ACY, From GLOBE, AZ, To CASA GRANDE, AZ; CANYON MEDIA CORPORATION, Station KONY, Facility ID 18140, BPH-20070726AHL, From ST. GEORGE, UT, To

HURRICANE, UT; CAPSTAR TX LIMITED PARTNERSHIP, Station KIYS, Facility ID 51855, BPH-20070726ADN, From JONESBORO, AR, To CRAWFORDSVILLE, AR; CAPSTAR TX LIMITED PARTNERSHIP, Station KTEX, Facility ID 64631, BPH-20070803ACV, From BROWNSVILLE, TX, To MERCEDES, TX; CHEHALIS VALLEY EDUCATIONAL FOUNDATION, Station KACS, Facility ID 10685, BPED-20070813AAF, From CHEHALIS, WA, To RANIER, WA; CLEAR CHANNEL BROADCASTING LICENSES, INC., Station KHKZ, Facility ID 36166, BPH-20070803ACP, From MERCEDES, TX, To SAN BENITO, TX; COLLEGE CREEK MEDIA, LLC, Station KCLS, Facility ID 55461, BPH-20070803ADM, From ELY, NV, To PIOCHE, NV; CSN INTERNATIONAL, Station KGSF, Facility ID 92987, BMPED-20070430AEP, From ANDERSON, MO, To GREEN FOREST, AR; CSN INTERNATIONAL, Station KJCC, Facility ID 122517, BPED-20070719AAU, From CARNEGIE, OK, To HINTON, OK; CSN INTERNATIONAL, Station WUJC, Facility ID 122209, BMPED-20070806AEW, From ST. MARKS, FL, To TALLAHASSEE, FL; CSN INTERNATIONAL, Station KWYC, Facility ID 87267, BMPED-20070808ACK, From ORCHARD VALLEY, WY, To CHEYENNE, WY; CSN INTERNATIONAL, Station KJCC, Facility ID 122517, BMPED-20070814AAW, From CARNEGIE, OK, To HINTON, OK; EDUCATIONAL MEDIA FOUNDATION, Station KAIS, Facility ID 88397, BMPED-20070720ABV, From REDWOOD VALLEY, CA, To HOPLAND, CA; EDUCATIONAL MEDIA FOUNDATION, Station KVLK, Facility ID 122812, BPED-20070724ACV, From SOCORRO, NM, To MILAN, NM; EDUCATIONAL MEDIA FOUNDATION, Station KAIA, Facility ID 76841, BPED-20070730ACS, From BLYTHEVILLE, AR, To BLOOMFIELD, MO; EDUCATIONAL MEDIA FOUNDATION, Station KAIC, Facility ID 78758, BPED-20070803ACO, From TUCSON, AZ, To MAMMOTH, AZ; EXPONENT BROADCASTING, INC., Station WXJO, Facility ID 25386, BMP-20070725ACM, From GORDON, GA, To DOUGLASVILLE, GA; GEORGIA EAGLE BROADCASTING, INC., Station WMCD, Facility ID 65607, BPH-20070705AAA, From CLAXTON, GA, To SULLIVAN'S ISLAND, SC; KEILY MILLER, Station NEW, Facility ID 165946, BMPH-20070727ABV, From BEATTY, NV, To CRYSTAL, NV; NAPLES EDUCATIONAL

<sup>13</sup> The lone damage case from a lined unit was the result of a liner failure in a surface impoundment.

<sup>14</sup> Per the May 2000 Regulatory Determination, 65 FR 32224, potential damage cases are those with (1) documented exceedances of primary MCLs or other health-based standards only directly beneath or in very close proximity to the waste source, and/or (2) documented exceedances of secondary MCLs or other non-health-based standards on-site or off-site.

<sup>15</sup> See Footnote 1 regarding OSM's ANPR (72 FR 12026).