American Forest & Paper Association

November 19, 2010

Coal Combustion Residuals from Electric
Utilities Docket
Environmental Protection Agency
Mailcode: 28221T
1200 Pennsylvania Ave, NW
Washington, DC 20460

ATTENTION: Docket ID No. EPA-HQ-RCRA-2009-0640, Hazardous and Solid Waste Management System: Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals from Electric Utilities (75 *Fed. Reg.* 35128, June 21, 2010)

Dear Sir/Madam:

The American Forest & Paper Association (AF&PA) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's proposal on Hazardous and Solid Waste Management System: Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals from Electric Utilities (75 *Fed. Reg.* 35128, June 21, 2010). AF&PA is the national trade association of the forest products industry, representing pulp, paper, packaging and wood products manufacturers, and forest landowners. Our companies make products essential for everyday life from renewable and recyclable resources that sustain the environment. The forest products industry accounts for approximately 5 percent of the total U.S. manufacturing GDP, putting it on par with the automotive and chemical industries. Industry companies produce $200 billion in products annually and employ approximately 900,000 people earning $54 billion in annual payroll. The industry is among the top 10 manufacturing sector employers in 48 states.

Although AF&PA members are not directly regulated by this rulemaking, EPA indicates in the preamble that consideration of coal combustion residuals (CCRs) from other entities will likely follow decisions made regarding such residuals from electric utilities. According to the Energy Information Administration, the pulp and paper industry uses approximately one percent of the coal burned in the United States to generate electricity and steam. Virtually all of our facilities that generate electricity do so using highly-efficient combined heat and power technology. As a result, we are greatly interested in the rulemaking that EPA is undertaking concerning the regulatory scheme for CCRs from electric utilities.

EPA Correctly Excluded Pulp and Paper Mill Coal Combustion Residuals from this Rulemaking

AF&PA supports EPA's decision not to include coal combustion residuals from the manufacturing sector in this rulemaking. The pulp and paper industry's management of coal ash differs somewhat from that of the electric utilities – which uses 95 percent of all coal in the U.S. Therefore, we think that it makes sense to review our operations before regulating them.

At our request, the National Council for Air and Stream Improvement (NCASI), the independent, non-profit research institute that focuses on environmental topics of interest to the forest products industry, conducted an informal survey of most of the pulp and paper mills known to be the largest users of coal in the sector. Their findings confirm several important facts about coal use and ash generation in this industry.

- Pulp and Paper Mills manage coal combustion residuals differently than the electric utility sector.
    - Most of the mills burn a wide variety of fuels in addition to coal. As a result, those mills co-manage coal ash with ash generated from other fuels, particularly biomass.
    - Of the 27 mills surveyed, only four mills handle their coal ash separately from other ash.
- Pulp and Paper Mill CCR management units differ from those in the electric utility sector
    - No mill employs any surface impoundment for permanent storage of ash in wet form.
    - Of the 15 mills with wet ash ponds used for temporary storage, nine are known to have ponds that are "at grade" (an excavation only) and six have true impoundments in that one of more sides are aboveground because of a constructed earthen retaining wall.
- Pulp and Paper Mill CCR management units are significantly smaller than those in the utility sector.
    - The largest units are 23 to 60 acres in size and hold from 15 to 40 million gallons of wet ash.
    - Only one of the impoundments is used solely for coal combustion byproducts.
    - In contrast, utility management units are as large as 650 acres, holding hundreds of millions of gallons of wet ash.

AF&PA agrees with EPA's proposed definition of the Electric Power Sector as "that sector of the power generating industry that comprises electricity-only and combined-heat-and-power (CHP) plants whose primary business is to sell electricity or electricity and heat, to the public." We believe this definition properly excludes other energy

generating units associated with industrial operations that may only incidentally sell electricity to the public.

EPA Must Exclude CCRs from Pulp and Paper Mill Coal Combustion under the Definition of CCR

Within both the Subtitle C proposal (at Section 264.1301) and Subtitle D proposal (at Section 257.40(b)), EPA must revise its definitions of "Coal Combustion Residuals (CCRs)" to exclude non-electric utility residuals. The current definitions do not distinguish between electric utility and non-electric utility coal combustion residuals. However, the entire preamble of the rule for both the Subtitle C and Subtitle D proposals states that the proposals – regardless of which is chosen -- are directed towards electric utility residuals only. Therefore, the definitions must be revised to address only those residuals meant to be regulated by this rulemaking.

EPA Must Evaluate the Economic Impact of This Rule on Non-Utilities

AF&PA members are very concerned that EPA did not evaluate the economic impact that the electric utility proposed rule will have on the manufacturing sector, particularly if the Subtitle C rules are promulgated. Regulation of utility CCRs as hazardous wastes is likely to have the same effect for non-utility CCRs due to the stigma that the utility hazardous waste designation will have on non-utility CCRs. Specific areas requiring additional EPA evaluation include:

- The cost of electricity to industry customers resulting from imposition of both proposals, but particularly for the Subtitle C proposal. There will be a considerable impact on industries that purchase significant quantities of electricity from utilities because the utilities will pass their increased management and disposal costs on to their industrial customers. Although the utility industry has not provided (prior to the comment deadline) their projected increased costs, they have repeatedly noted that imposition of the Subtitle C proposal would significantly increase their operating costs.
- The cost of managing CCRs for non-utilities.
    - The costs of non-utilities disposing of CCRs that can no longer be beneficially used as a result of the imposition of the Subtitle C rule on utility coal ash.
    - The cost of non-utilities managing their ash as hazardous waste, including manifest, transportation, and waste management requirements.
    - The cost of non-utilities building separate CCR management units from those used to manage, primarily biomass ash, to avoid mixture rule implications.
- The potential mill closures and job losses resulting from significant increased energy costs.

EPA Should Embrace its 2000 Determination that CCRs Should Be Regulated as Non-Hazardous Waste

AF&PA strongly supports the decision reached by the Clinton Administration in 2000 that coal combustion residuals should be regulated under Subtitle D – the nonhazardous waste provisions – of RCRA. We believe that EPA should continue down this path. Had the Agency completed the rules it said it would, appropriate management standards, engineering design, and integrity evaluation would have been in place. TVA would have had to change its CCR management -- thus probably avoiding the 2008 catastrophic failure of its surface impoundment that prompted this rulemaking.

Our evaluation of the additional information developed by EPA subsequent to the 2000 determination is that the new data do not support the need for applying the onerous hazardous waste regulations to coal combustion byproducts. The damage cases discussed in this proposal do not raise questions about the movement of CCRs – merely the proper disposal. As such, CCRs do not warrant the cradle-to-grave approach that is embodied in the hazardous waste program.

EPA admits in its discussion of the Subtitle D rule that requirements proposed under Part 257 will be equivalent in protection to those under Part 264. EPA notes (see 74 *Fed. Reg*. at 35793) "Several of the provisions EPA is proposing under RCRA subtitle D either correspond to the provisions EPA is proposing to establish for RCRA subtitle C, or are modeled after the existing subtitle C requirements." EPA will achieve basically the same level of protection under the Subtitle D program as it will under the Subtitle C program – yet without the impossibly onerous program that is inappropriate for CCRs.

EPA Should Promulgate the Subtitle D "Prime" Option.

AF&PA members believe that the Subtitle D "Prime" option – which allows the "grandfathering in" of existing units that do not pose threats to the environment -- is the most cost effective, environmentally protective approach that EPA could take. Many of the AF&PA member impoundments and landfills are monitored and do not show signs of encroachment to the environment. We believe those units should continue to be used without substantial additional changes.

Beneficial Use of CCRs Will Be Significantly Reduced if CCRs are Deemed Hazardous Waste

AF&PA members are extremely concerned with EPA's belief that beneficial use of CCRs will rise if their disposal is regulated under the hazardous waste regulations. We think EPA is incorrect.

AF&PA members work hard to find beneficial uses for all of their residuals. One of the criteria used to evaluate whether beneficial use is appropriate is the degree of risk involved in the use. This could be environmental, economic, perception, or legal risk. Some risk is always expected; however, companies do not want to incur risks that can be avoided to protect the reputation of their enterprise and brands. If EPA promulgates hazardous waste regulations for CCRs for electric utilities, manufacturing companies are likely to see beneficial use as posing a substantial perception risk – even if the beneficial use of manufacturing CCRs is fully within legal boundaries. This type of risk imposes significant financial burden that is hard to control, thus making beneficial use unattractive – even if the actual cost of disposal is higher. As a result, those materials will be disposed rather than reused – which is not only inconsistent with years of U.S. policy to support reuse and recycling, but it is a waste of resources. And, it is inconsistent with the goals of the Resource Conservation and Recovery Act.

Conclusion

The U.S. pulp and paper industry operates in a highly competitive global marketplace. Unlike the electric utilities, it is not possible for pulp and paper mills to pass on additional energy costs to customers because global competitors do not have similar costs. EPA has the opportunity to keep jobs in the U.S. and to keep manufacturing cost competitive by NOT promulgating hazardous waste regulations for electric utility coal combustion byproducts.

Please do not hesitate to contact me or Jerry Schwartz (jerry_schwartz@afandpa.org, 202.463.2581) if you have any questions on these comments.

Thank you for your consideration,

Paul Noe
Vice President for Public Policy