

## CLEAN AIR TASK FORCE

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Thomas P. Dunne  
Assistant Administrator  
Office of Solid Waste and Emergency Response  
USEPA Headquarters  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Re: Voluntary Proposal for the Management of Coal Combustion Waste from the Utility Solid Waste Activities Group

Dear Mr. Dunne:

The Clean Air Task Force and Hoosier Environmental Council recently received the "Utility Industry Action Plan for the Management of Coal Combustion Products" developed by the Utility Solid Waste Activities Group. Our review of the plan raises very significant concerns about the plan's fundamental substantive deficiencies and the inappropriateness of voluntary standards for management of coal combustion waste (CCW).

We sincerely hope that EPA will not consider this proposed plan as an alternative to the promulgation of RCRA regulations. According to your May 2000 *Regulatory Determination on Wastes from the Combustion of Fossil Fuels*, EPA determined that subtitle D standards were needed to ensure the safe disposal of coal combustion waste given the significant evidence of damage to groundwater caused by improper disposal of CCW at numerous disposal sites across the United States.

We understand that EPA is in the process of developing draft regulations under subtitle D of RCRA governing the disposal of coal combustion waste in landfills and surface impoundments and that the target date for promulgation of these regulations is mid 2006. The Clean Air Task Force, Hoosier Environmental Council and the numerous environmental groups deeply concerned about this issue trust that the agency will stay on track to generate enforceable standards. If EPA is seriously considering renegeing on the commitments set out in its Final Determination, we would appreciate your notifying the Task Force and meeting with stakeholders to discuss this major change in direction.

The attached memorandum summarizes our major objections to the substance of the USWAG voluntary plan. As stated above, our objections nevertheless are not limited to substance; we strongly object to acceptance of any scheme that postpones the promulgation of enforceable regulations. Given the track record of electric utilities and their continued reluctance to provide critical safeguards for waste disposal units, including such basic safeguards as groundwater monitoring and liners, EPA's acceptance of voluntary standards would be wholly inappropriate.

Thank you for considering our comments. We look forward to participating in the rulemaking process, and will continue to work with your staff to provide information on CCW damage cases as that information becomes available.

Respectfully,

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Senior Counsel  
Clean Air Task Force

Tim Maloney  
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Hoosier Environmental Council

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CATF and HEC Concerns Regarding the USWAG Voluntary Proposal for CCW Disposal

The “Utility Industry Action Plan for the Management of Coal Combustion Products” covers four substantive areas. It asks participating owners and operators to agree to groundwater performance standards, the implementation of a groundwater monitoring program, restrictions on filling sand and gravel pits, and consideration of alternatives to construction of new surface impoundments.

CATF and HEC oppose any voluntary action plan for the management of CCW. Even as a mandatory rule, CATF and HEC have numerous concerns with this Plan:

1. Groundwater Performance Standards

- a. The “standards” are too narrowly described, The plan cites only primary MCLs as the performance standards. Many of the contaminants of concern in CCW do not have MCLs (eg, boron, molybdenum, manganese, sulfate). Consequently under this plan there is neither the requirement for testing nor the existence of standards for critical contaminants of concern.
- b. The performance standards only apply “in a designated drinking water source aquifer.” This is far too narrow an application.
- c. There are major loopholes allowing “alternative performance standards.” The Plan allows for alternative groundwater performance standards if the facility makes a vaguely described demonstration to “an appropriate government agency.” This mechanism for altering the performance standard is far too loosely described and therefore would be subject to abuse. The plan states that such alternative standards are used in the municipal solid waste disposal regulations, but there are important and critical differences in the flexibility allowed under 40 CFR Part 258. One such difference is that the alternate performance standard cannot be used if the groundwater may be needed or used for human consumption.

2. Groundwater Monitoring Program

The described program is grossly deficient because:

- a. Only primary MCLs are addressed, leaving out many critical contaminants of coal ash as well as coal ash indicator parameters.
- b. The program requires only semi-annual monitoring. Quarterly monitoring should be required.
- c. Standards for groundwater monitoring waivers are too vague. The program can be waived if owners demonstrate that there is no reasonable potential for migration of *primary* drinking water constituents from the unit to an aquifer *designated as a drinking water source*. In contrast, 40 CFR Sec. 258.50(b) states that says groundwater monitoring requirements may be suspended if the owner can demonstrate that there is no potential for migration of *hazardous constituents* from the MSWLF unit to the *uppermost aquifer during the active life of the unit and the post-closure care period*.
- d. Time frames for responsive action are not set (“reasonable” period of time is not defined) when monitoring detects contamination.
- e. While “assessment monitoring” may be required (although it is not defined and its parameters are not determined), it does not automatically lead to detection monitoring when assessment monitoring confirms contamination.
- f. The plan allows contamination to occur for *over a year* before assessment monitoring is triggered. According to the plan, assessment monitoring is only

required when exceedances are detected “during two consecutive semi-annual monitoring events.”

- g. There is no explicit requirement for corrective action in the plan even after contamination of groundwater is determined. A reference is made to the corrective action requirements in 40 CFR Part 258, but the requirement is unclear.

3. Restrictions on CCW Placement in Sand and Gravel Pits.

Since 2000, EPA has specifically identified CCW disposal in sand and gravel pits as an activity that should be prohibited because of the many damage cases resulting from this practice. However:

- a. The plan contains no prohibition on disposal of CCW in sand and gravel pits, only the prohibition of disposal without “appropriate site-specific engineering and management controls to protect groundwater.”
- b. No required safeguards are set forth in the plan. The plan only lists several options for “management controls.”
- c. The plan contains no prohibition on CCW placement in groundwater.

4. Dry Handling “Consideration”

- a. This plan should contain a prohibition on construction/expansion of surface impoundments at new and existing power plants or, in the alternative, require a set of mandatory safeguards for all new and expanded surface impoundments.
- b. The requirement for participating owners to “maintain records that indicate the basis” for the determination to build new surface impoundments is vague to the point of being meaningless.

5. Essential Sections are Missing from the Plan

Important areas are absent from the plan including requirements regarding the closure of disposal facilities, post-closure requirements, and financial assurance for facilities. These are essential components of any plan that addresses CCW disposal.