

Bryan W. Shaw, Ph.D., *Chairman*
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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 3, 2013

Hazardous and Solid Waste Management System
Identification and Listing of Special Wastes
Disposal of Coal Combustion Residuals From Electric Utilities
Notice of Data Availability and Request for Comment
Environmental Protection Agency
Mail code 28221T
1200 Pennsylvania Ave. NW., Washington, DC 20460
Attention Docket ID No.EPA-HQ-RCRA-2012-0028

Re: Comments on Hazardous and Solid Waste Management System: Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals (CCRs) From Electric Utilities: Notice of Data Availability and Request for Comment

Dear Sir or Madam:

The Texas Commission on Environmental Quality (TCEQ) appreciates the opportunity to respond to the U.S. Environmental Protection Agency's Notice of Data Availability and Request for Comment published in the August 2, 2013 Federal Register/Volume 78, No. 149, pp 46940-46947. EPA is seeking comments on specific issues as part of the final rule development for CCR management, including comments associated with the closure requirements for CCR surface impoundments and landfills.

Enclosed, please find TCEQ's comments relating to EPA's action referenced above. If you have comments or questions concerning the enclosed comments, please contact Mr. Tanveer Anjum, Manager, Industrial & Hazardous Waste Permits, at (512) 239-1129 or Tanveer.anjum@tceq.texas.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Zak Covar", written over a horizontal line.

Zak Covar
Executive Director

ZC/TA/VH

Enclosure

Comments on Hazardous and Solid Waste Management System: Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities: Notice of Data Availability and Request for Comment
Docket ID No. EPA-HQ-RCRA-2012-0028

Background

On June 21, 2010, the U.S. Environmental Protection Agency (EPA) published a proposal to regulate management of coal combustion residuals (CCRs). On November 19, 2010, the Texas Commission on Environmental Quality (TCEQ) provided comments on the EPA proposal and stated that existing TCEQ regulations and programs are effective and encourage CCR recycling. Our comments pointed out that subjecting CCRs to the hazardous waste regulations would negatively impact their beneficial use. The TCEQ stated a preference for regulating CCRs under Subtitle D of the Resource Conservation and Recovery Act should EPA determine that federal regulation is necessary and appropriate. The TCEQ would like to take this opportunity to reiterate this preference.

On August 2, 2013, EPA issued a Notice of Data Availability (NODA) and Request for Comment in Federal Register/Volume 78, No. 149, pp 46940-46947. EPA is seeking comments on specific issues, including comments associated with the closure requirements for CCR disposal units, as part of the final rule development for CCR management. The TCEQ comments on some of the specific issues included in the August 2013 EPA NODA and Request for Comment are included below:

TCEQ Comments

1. Time Frame to Initiate Closure

The EPA's proposed rule under the RCRA Subtitle D option requires that the facilities initiate closure no later than one year after the most recent receipt of waste (i.e., if the unit has not received waste for a year, the owner or operator must initiate closure).

The TCEQ recommends that the one-year deadline included in the original proposal in 40 CFR §257.100(j) be increased to at least three years. As the EPA has acknowledged in the NODA, information collected during the structural integrity assessment from several coal-fired electric utilities shows that the one-year time frame required in the original proposal is impractical and would create a number of operational constraints. Further, the NODA notes that information collected from electric utilities indicated that there may be legitimate reasons for a CCR surface impoundment or landfill to be kept idle for two to three years (or more) before waste management in the unit is resumed. Therefore, by requiring closure of the unit to be initiated within one year after the most recent receipt of waste (as originally proposed), EPA would force a facility to close the unit when there is still additional capacity to operate the existing management unit. Based on these observations, the TCEQ recommends that the EPA allow facilities at least three years to initiate closure of a CCR landfill or surface impoundment if the management unit has useful capacity and is planned to be used in the future.

In addition, the TCEQ recommends that 40 CFR §257.100(j) be further revised to include a provision for the owner or operator to request an extension to the proposed three-year time frame and provide flexibility for States to approve such extensions based on a case-by-case review and merit of the request.

2. Time Frame to Complete Closure

The EPA's proposed rule under the RCRA Subtitle D option required that the CCR landfills and surface impoundments be closed within 180 days following initiation of closure activities.

The TCEQ agrees with the numerous comments received on the proposed rule regarding the impracticability and infeasibility of completing closure of the CCR management units within the 180-day timeline. As the EPA's NODA and Request for Comment acknowledged, there are many factors, including the site's operational practices, site physical features and complexities, and market conditions, that influence the closure of CCR management units. The TCEQ supports a tiered approach, based on the size of a CCR management unit, as the basis for the deadline to complete closure activities for CCR landfills and surface impoundments. The EPA's NODA and Request for Comment includes proposals received from some commenters on such a tiered approach that can be grouped under four categories: (1) units smaller than 20 acres would be subject to a one-year deadline to complete closure; (2) units between 20 and 50 acres would be subject to a two-year deadline to complete closure; (3) units between 50 to 75 acres would be subject to a three-year deadline to complete closure; and (4) units greater than 75 acres would be subject to a site specific deadline to complete closure. The TCEQ supports consideration of such a tiered closure schedule and recommends that a provision be added to provide flexibility for States to approve additional extensions to the deadline based on a case-by-case review and complexity of the site conditions. Towards this, the TCEQ recommends a revision to 40 CFR §257.100(k) in the proposed rule to include provisions for the owner/operator of a CCR surface impoundment or landfill to request an extension to the unit's closure schedule beyond the timeframes proposed in the tiered approach.

The TCEQ appreciates the opportunity to provide comments on the proposed regulations for CCR management.