Coal Ash Management: Change IS Coming

By: Joshua R. More
Overview EPA CCR Co-Proposal

- On May 4, 2010 USEPA issued their Proposed Rule for Coal Combustion Residues Reassess Bevill determination
- Revisiting its regulatory determination for CCRs under the Bevill amendment
- Decision is driven by Kingston and additional damages cases
Potentially Affected Parties and Operations

• Generators
• Storage facilities
• Disposal facilities
• Beneficial users
• Transporters

• The proposed rule applies to all CCRs generated by electric utilities and independent power producers.
Two Co-Proposed Regulatory Options

- “Special Waste” under Subtitle C
- Solid Waste under Subtitle D

- Both regulatory proposals attempt to accomplish the same goals; the major difference involves implementation, enforcement, and costs
RCRA Hazardous Waste Subtitle C

• Existing surface impoundments
  – Surface impoundments which were in operation prior to effective date
  – All existing surface impoundments that have not been closed in accordance with RCRA performance standards are subject to all Subtitle C closure requirements (e.g. obtain a Part A permit and comply with interim status regulations)
RCRA Hazardous Waste Subtitle C

• Active vs. Inactive Existing Surface Impoundments
  – Active
    • Within 5 years from the effective date cease receiving CCRs
    • Closure within 2 years after cessation
  – Inactive
    • Rule could be interpreted to mean closure within 2 years from the effective date (Section 268.14)

Preamble and Section 264.1300 suggest that inactive existing facilities are subject to the proposal
RCRA Solid Waste Subtitle D

• All existing surface impoundments must be lined within 5 years or closed
  - Unlike Subtitle C, lined surface impoundments may continue to receive CCRs

• All existing surface impoundments must meet certain location restrictions or be closed within 5 years (e.g., not be located in unstable areas or take measures to address the issues)
Closure Requirements

• Closure and post-closure care for surface impoundments
  – Closure in place is an option
  – Closure plan required
  – Cover system
  – Post-closure care and monitoring (detection, assessment, corrective action) (30 year)
Closure of an Unlined Pond
Closure of an Unlined Pond

- Like most state programs, Illinois’ water pollution control rules govern the operation (discharges) of the surface impoundment, but not closure.
- State initially treated closed impoundment as a landfill.
  - However, many of the technical requirements applicable to landfills were not applicable to impoundments (e.g., cap, leachate collection, and operating requirements).
Closure of an Unlined Pond

• Working with the State we developed a site specific rule that incorporated many of the landfill closure requirements, but tailored for this situation.
  – Waste to remain in place
  – Groundwater trench to address transport
  – Geosynthetic cap
  – Assessment, detection and limited corrective action
Mitigating Risks

- Understand how EPA proposal will impact operations
- Review and assess current ash management
- Understand state requirements
- Understand potential opportunities to avoid applicability of expected regulation
Contact Information

Joshua R. More
Environmental Group
SCHIFF HARDIN LLP
312.258.5769
jmore@schiffhardin.com