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EPA proposes two alternatives for regulating coal ash disposal by utilities in surface impoundments and landfills

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EPA is proposing to change how it regulates the disposal of coal ash and other coal combustion residuals generated by electric utilities from the combustion of coal. Currently, coal ash is regulated under Subtitle D of the Resource Conservation and Recovery Act (RCRA) and subject to state oversight. Under this regime, coal ash, generated at approximately 100 million tons annually, is typically disposed of either in liquid form in surface impoundments or in solid form in landfills.

EPA has proposed two alternative regulations aimed at reducing environmental and health risks associated with the disposal of coal ash in such surface impoundments and landfills. The first option is that coal ash would be regulated as "special waste" under Subtitle C of RCRA. The second option is that coal ash continue to be regulated under Subtitle D as a solid waste, but under new federal minimum criteria which states would have the option of adopting.

Under the first option, coal ash would be subject to the same requirements as other hazardous waste regulated under Subtitle C of RCRA, except that EPA would allow beneficial use, such as application in concrete, cement and wallboard. Subtitle C regulates the generation, transport, treatment, storage and disposal and imposes a permitting program. Existing surface impoundments would either have to close in accordance with the new rules or upgrade to the new rules within four years. The cost of compliance has been estimated at \$1.4 billion.

EPA believes the practical effect of their new rules will be that owners of surface impoundments will choose not to or be unable to comply with clean closure or retrofitting requirements due to the size of the units and the volume of waste involved. Therefore, the new rules would effectively phase out surface impoundments. Environmental groups support this option and point to a recent incident at the Tennessee Valley Authority's Kingston Fossil Plant in Roane County, TN in

December 2009, where a **surface** impoundment wall failed, releasing more than one billion gallons of water-**ash** mixture over nearby **land and** waterways. The direct cost to clean up the TVA spills is currently estimated to exceed \$1 billion.

Under the second option, **coal ash** would continue to be regulated as a solid waste under Subtitle D of RCRA, but states would have the option of adopting new **minimum** federal **standards** governing facilities **for** their **disposal**. Subtitle D does not regulate the generation, transport or treatment of **coal ash**, **and** there is no permitting program. This option would impose some of the same **disposal** requirements as the first option, but **in** a self implementing program. Requirements would **include** location restrictions, composite **liners and** leachate collection **and** removal system. **Surface impoundments** would have to come **into** compliance with the new requirements or close **within** five years. The estimated cost of the second option is \$587 million. **EPA** expects that this option would not cause facilities to cease wet **handling**. A variation on the second option differs only **in** that it would allow existing **surface impoundments** to continue to operate, without retrofitting, **for** the duration of their useful life. The cost of this option is estimated to be \$236 million.

Once **EPA** publishes the proposed rule, **interested** parties will have 90 days to comment.

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