



Western Interstate Energy Board/ WINB

June 5 2007

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Office of Surface Mining
Administrative Record Room
Room 252-SIB
1951 Constitution Avenue, NW
Washington, DC 20240

RE: *Placement of Coal Combustion Byproducts in Active and Abandoned Coal Mines, Docket No. 1029-AC54*

To Whom It May Concern:

The Reclamation Committee of the Western Interstate Energy Board (WIEB) is an organization of western coal producing states. Western states produce over half of the nation's coal and as the demand for power increases there will be increased demand for western coal. We offer these comments regarding Office of Surface Mining's (OSM's) notice of proposed rulemaking published on March 14, 2007 at 72 Fed. Reg.12026. The WIEB member states administer approved regulatory programs under the Surface Mining Control and Reclamation Act of 1977 (SCMRA), and most also regulate noncoal mining operations pursuant to state laws enacted for that purpose. Most of the member states also have solid waste regulatory authority pursuant to the Resource Conservation and Recovery Act (RCRA) and the Solid Waste Disposal Act (SWDA). Many also possess authority to issue NPDES permits pursuant to the Clean Water Act. We thank you for the opportunity to submit these comments.

There have been numerous meetings between the coal producing states, OSM, the U.S. Environmental protection Agency (EPA) and other interested parties concerning the regulation of the placement of coal combustion by-products into mine voids. On March 1, 2006, the National Research Council (NRC) within the National Academy of Sciences released to the public its final report entitled "Managing Coal Combustion Residues (CCRs) at Mines." The study was in response to a request from Congress and was initiated in June of 2004. The

Tony Usibelli
Chair

Douglas C. Larson
Executive Director

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NRC conducted the study to examine the health, safety, and environmental risks associated with using coal combustion residues (also referred to as coal combustion wastes or coal ash) in reclamation at active and abandoned coal mines. The study was sponsored by the EPA.

In its final report, the NRC made several findings and recommendations regarding mine placement of CCRs, many of which directly impact the regulatory regime that governs this practice. In its ANPR, OSM is seeking comments on how the NRC recommendations should be implemented, including how the agency should revise the regulations implementing Titles IV and V of SMCRA to regulate the placement of CCRs on active and abandoned coal mine sites and what type of guidance documents, if any, the agency should issue. Our comments are:

- We support the concept that the “placement” of coal ash at active coal mines should be regulated by OSM under SMCRA (as opposed to EPA under RCRA);
- We agree with OSM's approach outlined in the ANPR;
- While we agree with the general elements of a CCB rule (waste characterization, site characterization, monitoring, etc), the rule should provide for flexible requirements based on site specifics. In other words, the sites in the West with low rainfall, deep water tables, etc. should not have to meet the same requirements as sites with greater connections to ground water.
- We support the principles contained in the OSM Western Region Guidance document although not all of the elements in the document need to be restated in rule.
- The rules should recognize some states may want the disposal of CCBs at a mine site be regulated under other state laws (e.g., solid waste laws).
- We encourage OSM to move expeditiously on these rules.

Thank you for the opportunity to comment on this advance notice of rulemaking and we look forward to reviewing the proposed rules. If you need any clarifications, please contact me.

Sincerely,



Richard A. Chancellor, Chair
Reclamation Committee
Western Interstate Energy Board