

country new unit set-asides, and assurance levels as follows: (1) Revise an error in Michigan's annual NO<sub>x</sub> budget to account for an erroneously assumed selective catalytic reduction (SCR) emission control device at one unit; (2) revise an error in Nebraska's annual NO<sub>x</sub> budget to account for an erroneously assumed SCR emission control device at one unit; (3) revise an error in the Texas SO<sub>2</sub> budget to account for erroneously assumed flue gas desulphurization (FGD, or scrubber) emission control devices at three units and revised assumptions regarding flue gas treatment in existing scrubbers at seven units; (4) revise an error in the Arkansas ozone-season new unit set-aside to account for erroneously omitted projected emissions from one new unit; (5) revise an error in the Texas new unit set-aside to account for erroneously omitted projected emissions for SO<sub>2</sub>, ozone-season NO<sub>x</sub>, and annual NO<sub>x</sub>; (6) revise New Jersey's ozone-season NO<sub>x</sub>, annual NO<sub>x</sub> and annual SO<sub>2</sub> budgets to account for an erroneously assumed scrubber and selective catalytic reduction emission control device at one unit and generation required for reliability purposes at six units; (7) revise Wisconsin's annual SO<sub>2</sub> and annual NO<sub>x</sub> budgets to account for an erroneously assumed FGD and SCR device at two units, and (8) revise New York's annual SO<sub>2</sub>, annual NO<sub>x</sub>, and ozone season NO<sub>x</sub> budgets based on required operational constraints likely to necessitate non-economic generation at ten units; (9) revise Louisiana's ozone season NO<sub>x</sub> budget taking into account operational constraints likely to necessitate non-economic generation at twelve units; (10) revise Mississippi's ozone season NO<sub>x</sub> budget taking into account operational constraints likely to necessitate non-economic generation at four units; (11) revise Texas's annual NO<sub>x</sub> and ozone season NO<sub>x</sub> budgets based on operational constraints likely to necessitate non-economic generation at seven units; and (12) revise Florida's ozone-season NO<sub>x</sub> budget taking into account the unavailability of a previously operating nuclear unit. EPA is also proposing to add an additional limit on the allocation of allowances to units covered by certain consent decrees. In addition, EPA is proposing to correct technical errors in the rule text.

**Public hearing:** The proposal for which EPA will hold the public hearing, if requested, is available at <http://www.epa.gov/crossstaterule> and also in the docket identified below. The public hearing, if requested, will provide interested parties the opportunity to

present data, views, or arguments concerning the proposal. EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. Written comments on the proposed rule must be postmarked November 14, 2011 unless a public hearing is requested in which event comments must be received on or before November 28, 2011.

Commenters should notify Ms. Stevens if they will need specific equipment or if there are other special needs related to providing comments at the hearing. EPA will provide equipment for commenters to show overhead slides or make computerized slide presentations if we receive special requests in advance. Oral testimony will be limited to 5 minutes for each commenter. EPA encourages commenters to provide EPA with a copy of their oral testimony electronically (via e-mail or CD) or in hard copy form.

The hearing schedule, including lists of speakers, will be posted on EPA's Web site <http://www.epa.gov/crossstaterule>. Verbatim transcripts of the hearing and written statements will be included in the docket for the rulemaking. Written statements (duplicate copies preferred) should be submitted to Docket ID No. EPA-HQ-2009-0491, at the address posted on EPA's webpage referenced above. Interested parties are strongly urged to monitor and consult the referenced Web site regarding the scheduled hearing.

EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule.

#### **How can I get copies of this document and other related information?**

EPA has established a docket for the proposed rule "Revisions to the Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone" under Docket ID No. EPA-HQ-OAR-2009-0491 (available at <http://www.regulations.gov>).

As stated previously, the proposed rule was signed on October 6, 2011 and is available at <http://www.epa.gov/crossstaterule> and in the above-cited docket.

Dated: October 6, 2011.

**Elizabeth Craig,**

*Acting Director, Office of Atmospheric Programs.*

[FR Doc. 2011-26314 Filed 10-11-11; 8:45 am]

**BILLING CODE 6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 257, 261, 264, 265, 268, 271 and 302**

**[EPA-HQ-RCRA-2011-0392; FRL-9476-6]**

**RIN 2050-AE81**

### **Hazardous and Solid Waste Management System: Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Data Availability and Request for Comment.

**SUMMARY:** This Notice announces and invites comment on additional information obtained by the Environmental Protection Agency (Agency or EPA) in conjunction with the proposed rule: Hazardous and Solid Waste Management System: Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities that was published in the **Federal Register** on June 21, 2010 (75 FR 35127). This information is generally categorized as: Chemical constituent data from coal combustion residuals (CCRs); Facility and waste management unit data; Information on additional alleged damage cases; Adequacy of State programs; and Beneficial Use. In addition, EPA is considering a variety of possible approaches to update and enhance the risk assessment and the regulatory impact analysis (RIA) supporting the development of the final rule. EPA is specifically soliciting comments on the validity and propriety of the use of all new information, data, and potential analyses being noticed today. The Agency is only requesting comment on the information either specifically identified in this Notice or located in the docket for this Notice and is not reopening any other aspect of the proposal or the underlying support documents that were previously available for comment. Comments submitted on any issues other than those specifically identified in this Notice will be considered "late comments," and EPA will not respond to such comments, nor will they be

considered part of the rulemaking record.

**DATES:** Submit comments on or before November 14, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-RCRA-2011-0392, by one of the following methods:

(1) <http://www.regulations.gov>: Follow the online instructions for submitting comments.

(2) *E-mail:* Comments may be sent by electronic mail (e-mail) to [rcra-docket@epa.gov](mailto:rcra-docket@epa.gov), Attention Docket ID No. EPA-HQ-RCRA-2011-0392. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

(3) *Fax:* Comments may be faxed to 202-566-9744. Attention Docket ID No. EPA-HQ-RCRA-2011-0392.

(4) *Mail:* Send two copies of your comments to 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, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Attention Docket ID No. EPA-HQ-RCRA-2011-0392.

(5) *Hand Delivery:* Deliver two copies of your comments to the 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, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Attention Docket ID No. EPA-HQ-RCRA-2011-0392. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-RCRA-2011-0392. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information

claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the 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, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566-0270. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number

for the Public Reading Room is (202) 566-1744.

**FOR FURTHER INFORMATION CONTACT:** Steve Souders, Office of Resource Conservation and Recovery (5304P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0002, telephone (703) 308-8431, e-mail address [souders.steve@epa.gov](mailto:souders.steve@epa.gov) or Jason Mills, Office of Resource Conservation and Recovery (5305P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460-0002, telephone (703) 305-9091, e-mail address [mills.jason@epa.gov](mailto:mills.jason@epa.gov). For more information on this rulemaking, please visit: [www.epa.gov/epawaste/nonhaz/industrial/special/fossil/ccr-rule/index.htm](http://www.epa.gov/epawaste/nonhaz/industrial/special/fossil/ccr-rule/index.htm).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. How should I submit CBI to the agency?**

Do not submit information that you consider to be CBI electronically through <http://www.regulations.gov> or by e-mail. Send or deliver information identified as CBI only to the following address: RCRA CBI Document Control Officer, Office of Resource Conservation and Recovery (5305P), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-RCRA-2011-0392. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD-ROM, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is CBI). Information so marked will not be disclosed, except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD-ROM, mark the outside of the disk or CD-ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please contact: LaShan Haynes, Office of Resource Conservation and Recovery (5305P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0002,

telephone (703) 605-0516, e-mail address [haynes.lashan@epa.gov](mailto:haynes.lashan@epa.gov).

## II. Purpose of This Notice

With this Notice, EPA is reopening the comment period on the proposed rule: Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals from Electric Utilities (75 FR 35127, June 21, 2010), herein referred to as the "2010 proposed rule," for the limited purpose of obtaining public comment on additional information that may be relevant to the development of a final rule. Some of the information includes data or analyses that were received during the comment period for the 2010 proposed rule and that could have the potential to play a role in support for decisions in the final rule. It also includes information obtained based on further EPA research conducted both during and after the close of the comment period, and which was therefore not available for public comment during the prior comment period on the proposed rule. The NODA describes several general categories of information and data. In addition, this Notice describes some new information and data we have received that could be used in potential updates and enhancements to the risk assessment and RIA for the final rule.<sup>1</sup> Note, however, that the NODA does not provide an exhaustive presentation of all of the information and data that EPA is placing in the associated docket and seeking comment on. All the information subject to this notice can be accessed as described in Unit III of this notice.

EPA is still in the process of evaluating this information and deliberating the provisions of a final rule. Therefore EPA cannot definitively state whether this information will provide support for any provision of the final rule, or that the Agency has determined that it is appropriate to rely on this information in developing the final rule. In addition, it should not be assumed that the specific information identified in this Notice is the full sum of information received in comments that will be considered or that will influence the Agency's decisions in this rulemaking. However, in the interests of

<sup>1</sup> The cited risk assessment, "Draft: Human and Ecological Risk Assessment of Coal Combustion Wastes," April 2010 (EPA-HQ-RCRA-2009-0640-0002), and RIA, "Regulatory Impact Analysis for EPA's Proposed RCRA Regulation Of Coal Combustion Residues (CCR) Generated by the Electric Utility Industry," April 2010 (EPA-HQ-RCRA-2009-0640-0003) are available in the docket for the 2010 proposed rule.

ensuring that the public has had a full and complete opportunity to comment on the information that EPA has so far identified as having the potential to weigh in EPA's decisions on the final rule, EPA is reopening the comment period for the limited purpose of allowing the public to comment on the validity and propriety of using this information, data, and potential analyses in developing the final rule. EPA will also review this information to ensure the data is of sufficient quality before relying on it in deliberations on the final rule.<sup>2</sup> EPA will use its Information Quality Guidelines, as appropriate, to evaluate information to be used in the Risk Assessment as well as all other information which supports the regulatory determination.<sup>3</sup> In addition, EPA will also rely on the EPA Science Policy Council Assessment Factors Guidance to evaluate the quality and relevance of scientific and technical information.<sup>4</sup>

As noted above, all of the information on which EPA is requesting comment is either specifically identified in this Notice or is located in the docket supporting this Notice. EPA is not reopening the comment period on any other aspect of the proposed rule. This is not an opportunity for the public to supplement their comments on the proposed rule, or to raise issues that could have been raised during the original comment period. The only issues on which the Agency is soliciting comment relate to the information in the docket supporting this Notice, EPA-HQ-RCRA-2011-0392, or the potential revisions to the risk assessment specifically described in this Notice. Comments submitted on any issues other than those specifically identified in this Notice will be considered "late comments" on the proposed rule. EPA will not respond to such comments, and they will not be considered part of the rulemaking record.

<sup>2</sup> The Agency's *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency* contain EPA's policy and procedural guidance for ensuring and maximizing the quality of information that the Agency disseminates. They were developed in response to guidelines issued by the Office of Management and Budget (OMB) under Section 515(a) of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554; H.R. 5658). The EPA Information Quality Guidelines are available at: [http://epa.gov/quality/informationguidelines/documents/EPA\\_InfoQualityGuidelines.pdf](http://epa.gov/quality/informationguidelines/documents/EPA_InfoQualityGuidelines.pdf).

<sup>3</sup> Specific evaluation criteria are outlined in the Agency's *Data Quality Assessment: A Reviewer's Guide* (EPA/240/B-06/002, February 2006) and in the checklist provided at <http://www.epa.gov/quality/qs-docs/cklist-secondary.pdf>

<sup>4</sup> Available at <http://www.epa.gov/Osa/spc/pdfs/assess2.pdf>.

## III. Where can the information identified in this notice be found?

Most of the information that EPA is noticing today, including the specific comments, can be found in the docket supporting this Notice, EPA-HQ-RCRA-2011-0392. Otherwise, the information is available from websites at internet addresses provided in this notice. For example, laboratory CCR leachate reports, included in Maryland Department of the Environment Coal Combustion Byproducts Reporting Requirements which are being noticed below are available at: [http://www.mde.state.md.us/programs/Land/Solid\\_Waste/CoalCombustionByproducts/Pages/Programs/LandPrograms/Solid\\_Waste/ccbs/index.aspx](http://www.mde.state.md.us/programs/Land/Solid_Waste/CoalCombustionByproducts/Pages/Programs/LandPrograms/Solid_Waste/ccbs/index.aspx). In addition, to further assist the reader, we are also providing, where appropriate, the docket number of the comment as it is identified in the docket supporting the 2010 proposed rule, EPA-HQ-RCRA-2009-0640. The docket number can be found directly following the comment in a parenthetical. For example, Southern Company provided an Electric Power Research Institute (EPRI) report titled "Characterization of Field Leachates at Coal Combustion Product Management Sites," EPRI report 1012578 (attachment two of document No. EPA-HQ-RCRA-2009-0640-6300). With this additional information the reader can also use the proposed rule docket to access the noticed information.

Finally, most documents are available from the docket for viewing and downloading through <http://www.regulations.gov>; however, copyrighted documents are only available for viewing by visiting the docket for the proposed rule (EPA-HQ-RCRA-2009-0640) at [regulations.gov](http://www.regulations.gov).

## IV. What new chemical constituent data are being noticed?

EPA is soliciting comment on chemical constituent data on coal combustion residuals (CCRs) provided by commenters, which include total concentrations, pore water, and leaching test results for various types of CCRs, i.e., bottom ash, fly ash, flue gas desulfurization (FGD) gypsum, FGD sludge, fly ash cenospheres, boiler slag, and combined waste streams. The following documents identify the new CCR constituent data on which EPA is seeking comment.

1. Southern Company provided an Electric Power Research Institute (EPRI) report titled "Characterization of Field Leachates at Coal Combustion Product Management Sites," EPRI Report 1012578 (attachment two of document

No. EPA-HQ-RCRA-2009-0640-6300). This report provides field leachate results for bottom ash, fly ash, and FGD solids in Table A-1 of Appendix A. The same report was provided by EPRI in their comments on the proposed rule (EPA-HQ-RCRA-2009-0640-7776 and attachment four of document No. EPA-HQ-RCRA-2009-0640-9765). The report is copyrighted and not available through regulations.gov. The report may be viewed by visiting the docket reading room or can be obtained at no charge from EPRI at [www.epri.com](http://www.epri.com) by searching on the document number or title in the search bar.

2. The Alaska Department of Environmental Conservation (ADEC) provided a table of total metals, toxicity characteristic leaching procedure (TCLP), and synthetic precipitation leaching procedure (SPLP) results for a bottom ash and a fly ash sample from an electric utility, and from a non-utility. These data are provided in Appendix A of ADEC's comments on the proposed rule (attachment one of document No. EPA-HQ-RCRA-2009-0640-6409).

3. The Michigan Department of Natural Resources and Environment (MI DNRE) provided a summary table of TCLP data, "Leach Results from Evaluation of Ninety Coal Combustion Residuals Samples." These data are provided in Attachment 1 of MI DNRE's comments (attachment three of document No. EPA-HQ-RCRA-2009-0640-6815). MI DNRE has subsequently provided individual TCLP results for 102 CCR samples and 12 FGD gypsum samples, and two landfill leachate samples. These data are available in the docket supporting this Notice.

4. Sunflower Electric Power Corporation provided a table of SPLP leach test results for a fly ash sample, a bottom ash sample, and four composite sludge samples. The results are provided in a table on page 41 of the report "Volume 2: Site Hydrogeologic Assessment, Waste Characterization, and Fate and Transport Modeling, Holcomb Common Facilities Industrial Landfill, July 27, 2007." (attachment three of document No. EPA-HQ-RCRA-2009-0640-6912).

5. The University of North Dakota Energy & Environmental Research Center, on behalf of the Coal Ash Resources Research Consortium, provided the following:

a. A report titled "Evaluation of Leaching Potential of Solid Coal Combustion Wastes, Final Report" (attachment two of document No. EPA-HQ-RCRA-2009-0640-6996) which includes tables in Appendix D of totals concentrations and leaching test procedure results for two fly ash

samples, a fly ash sludge, a filter cake sludge sample, and a poz-o-tec (a mixture of fly ash, FGD sludge, and quicklime (calcium oxide)) sample.

b. A report titled "Mercury and Air Toxic Element Impacts of Coal Combustion By-Product Disposal and Utilization" (attachment two of document No. EPA-HQ-RCRA-2009-0640-6997) which includes tables in Appendix M of leaching test results for 58 fly ash, five FGD, and four FGD gypsum samples using various leaching methods, but not TCLP, and TCLP mercury results for 15 fly ash samples.

c. Appendix E of the report titled "Demonstration of Coal Ash for Feedlot Surfaces" (attachment five of document No. EPA-HQ-RCRA-2009-0640-6998) which includes tables of leaching test results for five fly ash and two bottom ash samples using 18-hr, 30-day, and 60-day leach methods, plus bulk and trace element data for five fly ash samples, two bottom ash samples, and one slag sample.

6. In their comments on the proposed rule, EPRI provided the following:

a. Tables of total metals and TCLP results summary statistics for 32 FGD gypsum and 11 mined gypsum samples (attachment one of document No. EPA-HQ-RCRA-2009-0640-9765, page 81). EPRI has since provided EPA with individual TCLP results for the gypsum samples. These data are available in the docket supporting this Notice.

b. A report titled "Characterization of Field Leachates at Coal Combustion Product Management Sites; Arsenic, Selenium, Chromium, and Mercury Speciation," EPRI Report 1012578, (EPA-HQ-RCRA-2009-0640-7776 and attachment four of document No. EPA-HQ-RCRA-2009-0640-9765) which includes in Table A-1 of Appendix A, trace elements of field leachates from bottom ash, fly ash, and FGD sludge collected at 15 impoundments and 17 landfills. (This is the same report and data provided by the Southern Company described above.)

7. The Boiler Slag Consortium provided laboratory reports with total metals and TCLP results for boiler slag fines samples (attachment one of document No. EPA-HQ-RCRA-2009-0640-7787, attachment two of document No. EPA-HQ-RCRA-2009-0640-7787, and attachment three of document No. EPA-HQ-RCRA-2009-0640-7787).

8. Senator David Vitter provided laboratory reports with total metals and TCLP results for boiler slag fines samples (attachment two of document No. EPA-HQ-RCRA-2009-0640-6958, attachment three of document No. EPA-HQ-RCRA-2009-0640-6958, and

attachment four of document No. EPA-HQ-RCRA-2009-0640-6958). These are the same data provided by the Boiler Slag Consortium (attachment one of document No. EPA-HQ-RCRA-2009-0640-7787 and attachment three of document No. EPA-HQ-RCRA-2009-0640-7787).

9. The Gypsum Association provided tables of total metals and TCLP results for FGD gypsum (attachment one of document No. EPA-HQ-RCRA-2009-0640-8227, pages 15 through 19 and Exhibit 2).

10. TCLP results for five fly ash cenosphere samples were provided by Sphere One, Inc. (attachment one of document No. EPA-HQ-RCRA-2009-0640-8245, pages 4 through 6).

11. Congresswoman Michele Bachmann provided laboratory reports with total metals and TCLP results for boiler slag fines samples (attachment three of document No. EPA-HQ-RCRA-2009-0640-8262 and attachment four of document No. EPA-HQ-RCRA-2009-0640-8262). These are the same data provided by the Boiler Slag Consortium (attachment one of document No. EPA-HQ-RCRA-2009-0640-7787 and attachment three of document No. EPA-HQ-RCRA-2009-0640-7787).

12. U.S. Minerals provided a copy of draft comments from Harsco Minerals which includes a table of TCLP results for 34 slag samples (attachment one of document No. EPA-HQ-RCRA-2009-0640-8271, pages 11 and 12). Twenty five of the 34 samples were also provided by Harsco Minerals in their comments dated November 19, 2010 (see number 14 below). Only 24 of the 34 samples are from electric utilities.

13. The American Coal Ash Association (ACAA) provided the following in their comments on the 2010 proposed rule (EPA-HQ-RCRA-2009-0640-10486):

a. A report titled "Leaching of Inorganic Constituents from Coal Combustion By-Products under Field and Laboratory Conditions," EPRI, 1998 (TR-111773-V1) which includes tables of summary statistics for pore water concentrations from eight landfills and 12 surface impoundments for coal ash on page 3-2 and for FGD sludge on page 3-3, and tables of summary SPLP and TCLP results for CCRs from 10 surface impoundments on page 4-4 and 4-5. This report was provided by ACAA on a CD and is available for viewing by visiting the docket reading room. The report may also be obtained at no charge from EPRI at: <http://www.epri.com> by searching on the document number or title in the search bar.

b. A paper titled "Leachability of Trace Metal Elements from Fly Ashes,

and from Concrete Incorporating Fly Ashes,” which includes tables of leaching test results for fly ash and fly ash concrete on pages 21 and pages 23 through 25. This paper was provided by ACAA on a CD and is only available for viewing by visiting the docket reading room.

c. The paper titled “Comparative Leaching of Midwestern Fly Ash and Cement,” which includes tables of total metals concentrations and leaching test results for fly ash and cement on pages 30–6 through 30–14. This paper was provided by ACAA on a CD and is only available for viewing by visiting the docket reading room.

14. Harsco Minerals provided the following with their comments on the proposed rule (EPA–HQ–RCRA–2009–0640–10489):

a. A table of TCLP results for 25 boiler slag samples on page 13. One sample, source number 24, is from a non-utility.

b. A table of TCLP results for three boiler slag fines samples on page 14.

c. Laboratory analyses reports for the 25 boiler slag samples in (a) above (attachment seven of document No. EPA–HQ–RCRA–2009–0640–10489, Exhibit 6).

d. Laboratory reports of total metals and TCLP leaching tests for three boiler slag fines samples (attachment seven of document No. EPA–HQ–RCRA–2009–0640–10489, Exhibit 7). These are the same data provided by the Boiler Slag Consortium described in number 7 above.

e. Laboratory analyses reports of TCLP results for three pre-blast and three post-blast boiler slag blasting abrasives (attachment seven of document No. EPA–HQ–RCRA–2009–0640–10489, Exhibit 8).

15. Laboratory CCR leachate reports, included in Maryland Department of the Environment Coal Combustion Byproducts Reporting Requirements Annual Reports Received for 2008 through 2010: [http://www.mde.state.md.us/programs/Land/SolidWaste/CoalCombustionByproducts/Pages/Programs/LandPrograms/Solid\\_Waste/ccbs/index.aspx](http://www.mde.state.md.us/programs/Land/SolidWaste/CoalCombustionByproducts/Pages/Programs/LandPrograms/Solid_Waste/ccbs/index.aspx). Reports can be found under the heading “CCR Reporting Information” at the bottom of the webpage. EPA is seeking comment specifically on leachate reports pertaining to Constellation Energy; Mirant Mid-Atlantic, LLC; AES Warrior Run, LLC; and Allegany Energy Supply Company.

16. EPA’s Office of Research and Development (ORD), in coordination with Vanderbilt University (VU), has also developed CCR leaching data (Leaching Environmental Assessment Framework, or LEAF, data). Some of

these data considered applicable to the 2010 Risk Assessment were already made available in reports placed in the proposed rule docket (EPA–HQ–RCRA–2009–0640–0314, 0315, and 0329); further data are being made available to the public for the duration of the comment period at: <http://vanderbilt.edu/leaching>. To obtain a free access key, click the “License Application” option under the “LeachXS Lite” tab. EPA is also providing further documentation of the data and the methodologies used at: <http://www.epa.gov/nrmrl/pubs/600r10170/600r10170.pdf>.

#### V. What new facility and waste management data are being noticed?

The Agency is considering whether to use the following additional information sources in support of the final rule.

1. U.S. Department of Energy/Energy Information Agency (DOE/EIA): “2009: EIA–923 January–December Final, Nonutility Energy Balance and Annual Environmental Information Data.” This database is available on-line at a U.S. Department of Energy/U.S. Energy Information Administration Web site at: [http://www.eia.doe.gov/cneaf/electricity/page/eia906\\_920.html](http://www.eia.doe.gov/cneaf/electricity/page/eia906_920.html) under the heading “Downloads” at the bottom of the webpage. This database identifies facility data that may be considered in the development of the final rule.

2. On October 21, 2010, EPA issued a NODA (75 FR 64974) seeking public comment on the responses to Information Collection Requests that EPA sent to electric utilities on their CCR surface impoundments, as well as reports and materials related to the site assessments EPA has conducted on a subset of these impoundments. Additional responses and site assessment materials have been posted to EPA’s website since that time and this NODA addresses and solicits comment on this information, including:

a. The Information Request Responses to EPA’s Information Request Letter to Electric Utilities available at: <http://www.epa.gov/epawaste/nonhaz/industrial/special/fossil/surveys/index.htm>

b. EPA’s Coal Combustion Residuals Impoundment Assessment Reports available at: <http://www.epa.gov/epawaste/nonhaz/industrial/special/fossil/surveys2/index.htm>

#### VI. What reports regarding alleged damage cases from the management of CCRs are being noticed?

The Agency is noticing several reports received in comments to the 2010

proposed rule, relating to alleged CCR management damage cases:

1. A new report of alleged damage cases was released February 24, 2010, by the Environmental Integrity Project and Earthjustice titled “Out of Control: Mounting Damages From Coal Ash Waste Sites,” which presents 31 alleged CCR damage cases that were not included or were not recognized as damage cases in EPA’s July 2007 report (EPA–HQ–RCRA–2006–0796–0015) titled “Coal Combustion Waste Damage Case Assessments.” The report is available from the docket to this Notice.

2. In late 2009, EPRI submitted to EPA two draft reports titled “Evaluation of Coal Combustion Product Damage Cases: Volume 1: Data Summary and Conclusions” (finalized in July 2010), and “Evaluation of Coal Combustion Product Damage Cases: Volume 2: Case Summaries” (finalized in September 2010). In these reports EPRI claimed that the EPA was inconsistent in applying its own ‘test of proof’ criteria to determine which of the damage cases included in EPA’s July 2007 report qualify as CCRs-related proven damage cases. These reports are available from the docket to the proposed rule (EPA–HQ–RCRA–2009–0640–0326, and EPA–HQ–RCRA–2009–0640–0327, respectively). These are copyrighted reports and are not available for viewing on-line. The 2010 final reports are also copyrighted and are only available for viewing by visiting the docket to this Notice. They are also available on-line from EPRI at: <http://my.epri.com/portal/server.pt?open=512&objID=413&PageID=230509&mode=2&cached=true>.

3. A report released August 26, 2010, by the Environmental Integrity Project, Earthjustice, and the Sierra Club titled “In Harm’s Way: Lack Of Federal Coal Ash Regulations Endangers Americans And Their Environment,” which presents 39 alleged CCR damage cases. The report is available from the docket to this Notice.

#### VII. What new analyses of state programs are being noticed?

1. EPA is noticing the comments on the 2010 proposed rule, submitted by Earthjustice, Environmental Integrity Project, Sierra Club, Natural Resources Defense Council, Southern Alliance for Clean Energy, Southern Environmental Law Center, and Physicians for Social Responsibility (attachment one of document No. EPA–HQ–RCRA–2009–0640–6315), addressing gaps in state government regulatory programs applicable to the management of CCRs (pgs. 17–63).

2. The Agency is also noticing comments addressing state programs

submitted by the Association of State and Territorial Solid Waste Management Officials (attachment one of document No. EPA-HQ-RCRA-2009-0640-3936 and EPA-HQ-RCRA-2009-0640-8787), the Environmental Council of the States (attachment one of document No. EPA-HQ-RCRA-2009-0640-4003 and EPA-HQ-RCRA-2009-0640-8854) and 36 states. All of the states' comments are available in the docket to the proposed rule.

#### VIII. What new materials on beneficial uses are being noticed?

The Agency received a significant amount of additional data and other factual information relating to the beneficial reuse of CCR, such as the use in concrete, bricks and wallboard, during the comment period. EPA also obtained additional data as a result of further research. EPA is requesting comment on whether this information should be considered in the development of the final rule. All of these documents are available from the docket to this Notice.

#### IX. What new information and potential modeling analyses to update and enhance the risk assessment are being noticed?

EPA is considering updating its risk assessment prepared in support of the 2010 proposed rule based upon public comments and additional information made available since the publication of the proposed rule. The 2010 Risk Assessment, "Draft: Human and Ecological Risk Assessment of Coal Combustion Wastes," April 2010 ("2010 Risk Assessment") is available in the docket to the proposed rule (EPA-HQ-RCRA-2009-0640-0002). As noted previously, EPA is requesting comment only for the narrow purposes described in Unit II—i.e., on the validity and propriety of using the information, data, and analyses associated with this notice. As also noted previously, although EPA is singling out the information and data specifically listed below and in the docket for further public comment, it should not be assumed that this information/data is the full sum of the information/data received in comments that will be considered or that will influence the Agency's decisions in this rulemaking.

1. EPA is considering updating its pore water data by adding pore water data submitted by public commenters (previously discussed in Section IV). EPA is also considering the use of alternative statistical analysis, such as the use of quartiles or bootstrapping, in place of site averages for pore water data in order to retain intra-site variability in

these data while not biasing results from the sites with greater numbers of sampling points.

2. EPA is considering using the latitude and longitude data (obtained from additional information sources discussed in Section V) to estimate the distances from CCR waste management units to human and ecological receptors. EPA is considering updating its estimated distances to groundwater wells based on modeled population estimates discussed in the Agency's RIA for the proposed rule. Further documentation and the modeled population estimates based on synthesized population data sets are accessible at: <ftp://ftp.epa.gov/coal-combustion-residues/NODA-1>.

3. EPA is considering updating the estimated distances from CCR waste management units to the nearest surface water bodies, based on the new latitude and longitude data (obtained from additional information sources discussed in Section V).

4. EPA is considering modeling both landfills and surface impoundments throughout the operational life of the waste management unit and post-closure using the same modeling approach utilized in the 2010 Risk Assessment.

5. EPA is considering revisiting its screening assessment based on the new data and analyses above. EPA is also considering the use of the peer reviewed models, AERSCREEN and AERMOD, to evaluate fugitive dust ([http://www.epa.gov/ttn/scram/dispersion\\_prefrec.htm#aermod](http://www.epa.gov/ttn/scram/dispersion_prefrec.htm#aermod)). Depending on screening results, EPA may consider CCR fugitive dust and other above-ground exposure pathways from the open CCR waste management units for further modeling.

Dated: September 30, 2011.

**Mathy Stanislaus,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[PS Docket No. 11-153; PS Docket No. 10-255; FCC 11-134]

### Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks to accelerate the development and deployment of Next Generation 911 (NG911) technology that will enable the public to send emergency communications to 911 Public Safety Answering Points (PSAPs) via text, photos, videos, and data and enhance the information available to PSAPs and first responders for assessing and responding to emergencies. This Notice of Proposed Rulemaking seeks comment on a variety of issues related to the short-term and long-term transition to NG911.

**DATES:** Submit comments on or before December 12, 2011. Submit reply comments on or before January 10, 2012.

**ADDRESSES:** You may submit comments, identified by PS Docket No. 11-153 and/or PS Docket No. 10-255, by any of the following methods:

- *Federal Communications Commission's Web Site:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail:* [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or *phone:* 202-418-0530 or *TTY:* 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Patrick Donovan, Attorney Advisor, (202) 418-2413. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith Boley-Herman, (202) 418-0214, or send an e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in PS Docket No. 11-153, PS Docket No. 10-255, FCC 11-134, released on September 22, 2011. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554, or online at <http://transition.fcc.gov/pshs/services/911-services/>.

## I. Introduction and Executive Summary

1. In the Notice of Proposed Rulemaking, we seek to accelerate the development and deployment of Next