

Excerpt from
Compilation of State Comments received by ASTSWMO
regarding EPA Proposed Regulation of CCB

This compilation incorporates responses received by ASTSWMO as of March 31, 2009, from:

Colorado, Florida, Hawaii, Iowa, Kansas, Michigan, Missouri, Ohio, South Dakota, Tennessee, Virginia, West Virginia and Wisconsin.

The compilation includes copies of letters sent by some of these States directly to EPA.

Michigan

Michigan currently regulates coal ash as a solid waste under Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). Michigan's program for Solid Waste Management has been in place since 1978. These regulations were amended in 1993 when Michigan became an approved state under the Resource Conservation and Recovery Act (RCRA) Subtitle D program. Based on the analytical information that we have seen on coal ash, we believe that the levels of contaminants contained in coal ash are similar in nature to those found in cement kiln dust, wood ash, foundry sands, paper mill wastes, or steel mill waste. With the promulgation of the 1993 rules, we consider all these waste to be low-hazard industrial waste (i.e. they leach less than ten percent of the hazardous waste limits when using the appropriate leaching tests.) Low-hazard industrial waste in Michigan may be disposed of in a landfill that has less-stringent design standards than a landfill taking either industrial or municipal solid waste, or it may be disposed of in a permitted surface impoundment.

Michigan currently has eight sites that accept only coal ash and/or associated wastes from coal-fired power plants. Four of the facilities are surface impoundments, and four are solid waste landfills. Coal ash is also disposed of in combination with other wastes in numerous low-hazard industrial waste landfills, industrial landfills, and municipal solid waste landfills located throughout the state.

The four active surface impoundments were all in existence prior to the enactment of Michigan's Solid Waste Management Act in 1978 and were grandfathered-in without necessarily meeting the current requirements for the design and siting of such facilities. Three of the four surface impoundments are in the process of closing and/or converting to dry handling systems.

Michigan's design standards for low-hazard industrial waste landfills require liner systems comprised of either a natural soil liner not less than ten feet thick and demonstrating a hydraulic conductivity of no more than 1.0E-7 cm/sec, a three-foot thick recompacted clay liner demonstrating the same hydraulic conductivity, or a composite liner system incorporating a flexible membrane liner and a low hydraulic conductivity soil layer.

Landfills and surface impoundments are required to be permitted and licensed; must provide financial assurance; are subject to either groundwater monitoring or required to obtain a NPDES discharge permit; must provide for leachate collection in landfills; must have 30-year post-closure care obligations; and are subject to corrective action, if necessary.

The statutory provisions of Part 115, of the NREPA also exempt coal ash from regulation as a solid waste under certain conditions when the ash is used as a component of concrete, grout, mortar, or casting molds; when the ash is used as a raw material in asphalt for road construction; when the ash is used as aggregate or road or building material which will be stabilized or bonded by cement, limes or asphalt; or when the ash is used as a road base or construction fill that is covered with asphalt, concrete, or other material approved by the state.

RCRA Subtitle C wastes in Michigan are currently regulated under Part 111, Hazardous Waste Management, of the NREPA. The regulation of coal ash under full RCRA Subtitle C would end the current beneficial uses of coal ash. Existing surface impoundments and landfills would be subject to more stringent design standards and would require either 1) retrofitting of existing landfills (if even possible) or 2) closure of those disposal facilities. Neither of these options could be implemented immediately.

Michigan currently has regulations in place governing the reuse and disposal of coal ash that are protective of public health and the environment. If coal ash were determined to be subject to regulation under Subtitle C, it would necessitate considerable changes to Michigan solid and hazardous waste statutes and regulations. Such changes would likely be subject to considerable opposition from any industry and/or municipality that generates coal ash waste, and would likely lead to increased costs for energy generation.