

Advocacy Recommends EPA Reconsider Impact of Proposed Regulation of Coal Combustion Residuals on Small Entities

On November 19, 2010, the U.S. Small Business Administration's Office of Advocacy (Advocacy) submitted comments on the Environmental Protection Agency's (EPA's) notice of proposed rulemaking, *Hazardous And Solid Waste Management System; Identification And Listing Of Special Wastes; Disposal Of Coal Combustion Residuals From Electric Utilities* (75 Fed. Reg. 35128 (June 21, 2010)). EPA's notice, which set forth two co-proposals, would establish a new regulatory program for the regulation of Coal Combustion Residuals (CCRs, also known as "coal ash") from electric utilities under either Subtitle C or Subtitle D of the Resource Conservation and Recovery Act (RCRA). Although EPA has certified that this proposed action would not have a significant economic impact on a substantial number of small entities, Advocacy is concerned that this certification lacks a sufficient factual basis and that EPA should have conducted a Small Business Advocacy Review (SBAR) panel and prepared an Initial Regulatory Flexibility Analysis in support of the notice of proposed rulemaking.

Specifically, Advocacy raised the following concerns.

- Labeling coal ash a "special waste" may discourage businesses from using coal ash in products such as cement or asphalt and may create consumer concerns about the safety of coal ash.
- Small entities that generate coal ash may not be able to dispose of coal ash in substantially the same way as they would in the absence of regulation.
- Small entities may not be able to cover the costs of required investments and increases in operating costs by raising electricity prices.
- EPA does not address possible impacts on small businesses that transport, store or dispose of coal ash.

A complete copy of Advocacy's letter to EPA is available at www.sba.gov/advo/laws/comments/.

For more information about EPA's proposed rule on coal ash, please visit Advocacy's Web page at www.sba.gov/advo or contact David Rostker, Assistant Chief Counsel, at (202) 205-6966 or david.rostker@sba.gov.