Regulation Review

Final Coal Ash Rule

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The Environmental Protection Agency (EPA) recently released a final rule regulating coal combustion residuals (CCR). The proposed version arrived roughly four and a half years ago. The agency has decided to regulate CCR under Subtitle D of the “Resource Conservation and Recovery Act&rdquo

; (RCRA). Its other alternative, Subtitle C, would have included more stringent requirements and “direct federal oversight.” The unofficial, pre-publication version of the rule is 745 pages.

Proposed Rule

- Total Costs: $8.1 – $20.3 billion (7% discount rate)
- Total Benefits: $41.8 – $102.2 billion (7% discount rate)
- Net Benefits: $33.7 – $81.8 billion (7% discount rate)
- Paperwork Burden (under Subtitle C): 2.88 million hours (1.38 million under Subtitle D)

Final Rule

- Total Costs (3% discount): $23.2 billion ($7.3 billion at 7%)
- Total Benefits: (3% discount): $8.6 billion ($3.3 billion at 7%)
- Net Benefits (3% discount): -$14.7 billion (-$4 billion at 7%)
- Paperwork Burden: 288,880 hours

ANALYSIS

A total potential price-tag in excess of $23 billion is certainly significant. However, it is also curious how the proposed and final cost-benefit analyses diverge in form and content. Compare the Regulatory Impact Analysis (RIA) summaries for the proposed and final rules, respectively:

PROPOSED RULE RIA SUMMARY

FINAL RULE RIA SUMMARY

It's hardly surprising that a rulemaking extended over four and a half years with more than 425,000 comments has some changes, but the adjustments in this RIA are rather notable. The proposed rule includes an analysis period of 50 years; the final version takes a 100-year view. Furthermore, the proposed version only includes the seven percent discount rate, while the final rule includes the three percent rate as well. EPA explains its new rationale here:

The other notable aspect of this rule is that its costs exceed its benefits (using either discount rate). In fact, the "Benefit-to-Cost Ratio" goes from roughly 5:1 to 2:5. This is an incredible swing. The primary reason for this shift is a change in assumptions regarding "beneficial use," essentially the recycling of the CCR into other by-products such as walling or concrete. The proposed rule's RIA estimates "beneficial use" benefits of between $33 and $84 billion, but the final rule only attributes roughly $1-$3 billion in benefits to such practices.

Additionally, in terms of "beneficial use" assumptions, the difference between the proposal and final rule's potential gross benefits illustrates part of the reason EPA settled on the Subtitle D option. Under the alternative, where EPA would deem CCR as hazardous waste (Subtitle C), the agency estimated that the "stigma" of re-purposing hazardous waste would

create a massive disincentive for recycling, and thus a quantifiable negative benefit.

NEGATIVE “BENEFICIAL USE” SCENARIO

Environmental activists are generally disappointed in EPA for not labeling CCR hazardous waste. And while the final version still brings negative net benefits, it is far better than risking net negative benefits that exceed the total costs of most years of regulatory burdens.

In terms of additional analysis, while the rule does trigger the Unfunded Mandates Reform Act, it does not trigger the Regulatory Flexibility Act (RFA). However, the RFA analysis identifies “Fossil Fuel Electric Power Generation” (NAICS 221112) as the affected industry. Using Census data, the following states could experience the highest levels of costs under this rule.

COST SHARE FOR THE FIVE MOST AFFECTED STATES

State	Share of Total Costs
Texas	$2.5 Billion
Louisiana	$1.4 Billion
California	$1.2 Billion
Pennsylvania	$1.2 Billion
Ohio	$1 Billion