



U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Early Warning Report

Website for Coal Combustion Products Partnership Conflicts with Agency Policies

Report No. 11-P-0002

October 13, 2010

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Abbreviations

C ² P ²	Coal Combustion Products Partnership
CCR	Coal Combustion Residual
EPA	U.S. Environmental Protection Agency
OGC	Office of General Counsel
OIG	Office of Inspector General
ORCR	Office of Resource Conservation and Recovery
OSWER	Office of Solid Waste and Emergency Response



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

We initiated a review to determine whether the U.S. Environmental Protection Agency (EPA) followed standard practices in determining that coal combustion residuals (CCRs) are safe for the beneficial uses EPA has promoted. Our review identified issues that require immediate action by EPA. The results from this report will be included in our final report on the safe use of CCRs.

Background

CCRs are generated from burning coal. Since 2001, EPA has been promoting the beneficial use of CCRs through the Coal Combustion Products Partnership (C²P²). EPA has maintained a public C²P² Website and has used other means to promote the beneficial uses of CCRs. On May 4, 2010, EPA released a proposed rule to regulate CCRs.

For further information, contact our Office of Congressional, Public Affairs and Management at (202) 566-2391.

To view the full report, click on the following link:
www.epa.gov/oig/reports/2011/20101013-11-P-0002.pdf

Website for Coal Combustion Products Partnership Conflicts with Agency Policies

What We Found

EPA's C²P² Website presented an incomplete picture regarding actual damage and potential risks that can result from large-scale placement of CCRs. In its May 2010 proposed rule, EPA showed that environmental risks and damage can be associated with the large-scale placement of unencapsulated CCRs. According to EPA's proposed rule, unencapsulated use of CCRs may result in environmental contamination, such as leaching of heavy metals into drinking water sources. The proposed rule identified seven cases involving large-scale placement, under the guise of beneficial use, of unencapsulated CCRs, in which damage to human health or the environment had been demonstrated. EPA states in its proposed rule that it does not consider large-scale placement of CCRs as representing beneficial use. However, EPA's C²P² Website, which contained general risk information, did not disclose this EPA decision and did not make the seven damage cases readily accessible.

The C²P² Website also contained material that gave the appearance that EPA endorses commercial products. Such an endorsement is prohibited by EPA ethics policies and communications guidelines. We identified 9 of 23 case studies on the Website that reference commercial products made with CCRs or patented business technologies. All 23 of the studies were marked with EPA's official logo but none had the required disclaimer stating that EPA does not endorse the commercial products.

Although EPA has suspended active participation in C²P² during the rulemaking process, the C²P² Website remained available for public searches, information, and education. The C²P² Website contained incomplete risk information on the beneficial use of CCRs. The C²P² Website also contained apparent or implied EPA endorsements that are prohibited by EPA policies.

What We Recommend

We recommend that EPA remove the C²P² Website during the rulemaking process. Since our initial communication with EPA on June 23, 2010, EPA has removed access to the C²P² Website content; however, documents relevant to the rulemaking are available in the docket. We further recommend that EPA identify why actions prohibited by EPA policies occurred and implement controls to establish accountability. EPA agreed and proposed actions to address the recommendation.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

October 13, 2010

MEMORANDUM

SUBJECT: Early Warning Report:
Website for Coal Combustion Products Partnership
Conflicts with Agency Policies
Report No. 11-P-0002

FROM: Arthur A. Elkins, Jr.
Inspector General

A handwritten signature in dark ink, appearing to read "Arthur A. Elkins, Jr.", is positioned to the right of the "FROM:" line.

TO: Mathy Stanislaus
Assistant Administrator
Office of Solid Waste and Emergency Response

This early warning report is to inform you of findings by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA) that require immediate action regarding the EPA Office of Resource Conservation and Recovery (ORCR) Coal Combustion Products Partnership (C²P²). The purpose of the OIG work was to evaluate whether EPA used standard and accepted practices in determining that coal combustion residuals (CCRs) are safe for the beneficial uses EPA has promoted. This report presents significant OIG findings identified during our ongoing review.

Scope and Methodology

We conducted this evaluation in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

From March through July 2010, we interviewed staff and managers in ORCR, and we reviewed relevant EPA policies, coal ash regulatory documents, and the C²P² Website content. Additional details on our scope and methodology will be included in a separate final report that will discuss OIG findings on EPA's promotion of the beneficial uses of CCRs.

Background

CCRs result from the burning of coal and are mainly produced by power plants in the generation of electricity. According to industry estimates, approximately 136 million tons of CCRs were produced in 2008. Since 1980, CCRs have been exempted from federal hazardous waste regulation under the Bevill amendment to the Resource Conservation and Recovery Act. Starting in 2001, the EPA ORCR¹ has promoted the beneficial use of CCRs through C²P². C²P² was initiated under EPA's Resource Conservation Challenge voluntary program, which was designed to promote a resource conservation ethic by encouraging the reuse of industrial residuals, among other things. The program is sponsored by EPA and other federal agencies and includes more than 170 public and private partners.

EPA has used a public Internet site to promote the beneficial use of CCRs.² The C²P² Website included information on the types of beneficial use applications, results achieved through C²P², some information about risks and benefits of CCR uses, and case studies about specific uses of CCRs. The case studies were submitted by industry and academia, and some include discussions of commercial products made using CCRs.

CCRs have two general categories of beneficial uses. Encapsulated uses include incorporation of CCRs into a bound or solid form such as concrete. Unencapsulated uses are not bound in solid form, and include road embankments and agricultural uses.

On December 22, 2008, an estimated 5.4 million cubic yards of coal ash sludge were accidentally released from a containment dike at a Kingston, Tennessee, power plant. The ash extended over approximately 300 acres of land and generated a surge of water and ash that destroyed three homes, disrupted electrical power, ruptured a natural gas line, covered railway tracks and roadways, and necessitated the evacuation of a nearby neighborhood. An estimated 3 million cubic yards of the coal ash entered the Emory River in Tennessee and adjacent tributaries. In the aftermath of this catastrophe, EPA initiated a review to determine whether coal ash residues should be regulated. On May 4, 2010, EPA released a prepublication version of a proposed rule to regulate CCRs for the first time. The proposed rule was published in the Federal Register on June 21, 2010.

The C²P² Website is Inconsistent with EPA Positions in the Proposed CCR Rule

In the proposed rule, EPA identifies environmental risks and damage associated with large-scale placement of CCRs. EPA also states that unencapsulated uses, such as placement on the land in road embankments or agricultural uses, "have raised concerns and merit closer attention." However, the C²P² Website did not contain risk information consistent with that in EPA's proposed rule. Discussion of the damage cases that have proven environmental or human health damage from beneficial uses was also missing from the C²P² Website. As a result, the Agency's

¹ ORCR was formerly known as the Office of Solid Waste.

² Since our June 23, 2010, communication to EPA regarding OIG concerns with the C²P² Website, EPA has removed access to the C²P² Website content.

C²P² Website presented an incomplete picture regarding actual damage and potential risks that can result from large-scale placement of unencapsulated CCRs and other beneficial uses.

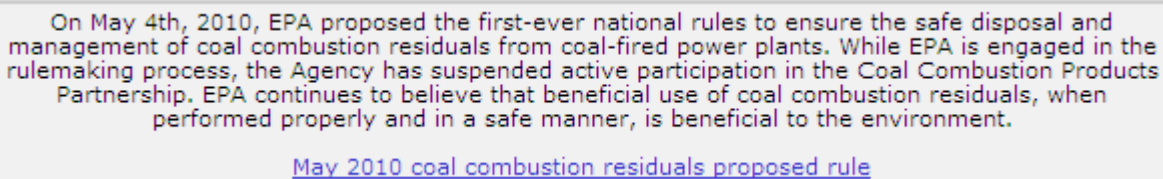
The proposed rule states:

- EPA is seeking comments on potential refinements for certain beneficial uses.
- EPA has identified seven damage cases involving large-scale placement, under the guise of beneficial use, of CCRs.
- EPA considers certain unencapsulated applications, such as fill in sand and gravel pits and other large-scale fill applications, as disposal and not beneficial use. EPA states that it does not recognize these practices as legitimate beneficial uses. EPA states that it has concluded that such practices raise significant environmental concerns. These concerns include risks from unsafe levels of CCR contaminants found in drinking water sources and in surface water.
- EPA has identified concerns with other unencapsulated uses of CCRs, such as the use of CCRs in road embankments and agricultural applications in the event proper practices are not employed. EPA states that these uses raise issues similar to the disposal of CCRs – that without proper protections, contaminants can leach into ground water and migrate to drinking water sources, posing significant public health concerns.
- EPA is considering approaches to better define beneficial use or develop detailed beneficial use guidance to supplement the regulations.

Although it did provide some general precautions on beneficial use, the C²P² Website did not identify large-scale fill applications as disposal, did not list known beneficial use damage cases, and did not emphasize EPA's concerns about beneficial use of unencapsulated CCRs in road embankments and agricultural applications.

After issuing the proposed rule, EPA added a statement to its C²P² Website that it has suspended active participation in C²P² during the rulemaking process (Figure 1). However, in its statement, EPA neither disclaimed information on the C²P² Website, nor removed Web content that was inconsistent with its current regulatory position as stated in the proposed rule.

Figure 1: EPA C²P² Web Statement



On May 4th, 2010, EPA proposed the first-ever national rules to ensure the safe disposal and management of coal combustion residuals from coal-fired power plants. While EPA is engaged in the rulemaking process, the Agency has suspended active participation in the Coal Combustion Products Partnership. EPA continues to believe that beneficial use of coal combustion residuals, when performed properly and in a safe manner, is beneficial to the environment.

[May 2010 coal combustion residuals proposed rule](#)

Source: EPA C²P² Website, <http://www.epa.gov/wastes/partnerships/c2p2/index.htm>.

Some C²P² Web Content is Misleading

The C²P² Website stated it contained case studies that “are intended to be illustrations of coal combustion product applications that the Agency believes can be beneficial to the environment.” The case studies were not produced by EPA, but were submitted by industry and academia. However, the case studies lacked EPA disclaimers and contained the EPA logo. EPA policies require the use of a disclaimer for articles by non-EPA employees expressing their own opinions. EPA policies also prohibit the use of the EPA logo in connection with the promotion of non-Government-produced goods or services. Of the 23 case studies that were accessible on the C²P² Website, 7 explicitly referenced commercial products and 2 referenced patented business technologies. The absence of EPA endorsement disclaimers and the use of the EPA logo are prohibited by EPA policies and imply the endorsement of commercial products by EPA.

EPA disclaimers

EPA’s *Policy and Implementation Guide for Communications Product Development and Approval* requires the following disclaimers:

- **Articles by non-EPA employees expressing their own opinions:** “The material in this document has been subject to Agency technical and policy review, and approved for publication as an EPA report. The views expressed by individual authors, however, are their own, and do not necessarily reflect those of the U.S. Environmental Protection Agency.”
- **Documents that refer to specific companies or products:** “Mention of trade names, products, or services does not convey official EPA approval, endorsement, or recommendation.”

In addition, the EPA Office of General Counsel (OGC) has determined that other disclaimers are permissible. OGC specifically recommended the use of the following disclaimer for case studies EPA has added to the administrative record for the proposed rulemaking: “Disclaimer of Endorsement: Reference herein to any specific commercial products, process or service by trade name, trademark, manufacturer, or otherwise, does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government.”

Use of the EPA logo

- **EPA Administrative Order 1015.2A** prohibits use of the logo in connection with the promotion of non-Government-produced goods or services.
- **The EPA Communications Stylebook: Logo Guide** states that the EPA logo is the signature and label of the Agency and that “[a]n EPA logo says and signifies that EPA produced (or co-produced) the material.”
- **Ethics and EPA logo use:** Every EPA employee is bound by the *Standards of Ethical Conduct for Employees of the Executive Branch*, 5 Code of Federal

Regulations Part 2635, which includes specific prohibitions against misuse of position. Misuse of position may be concluded from an inappropriate “appearance of governmental [EPA] sanction” and/or inappropriate endorsements. According to EPA, employees cannot allow the use of the EPA logo to endorse any nonfederal product, service, or enterprise. The only exception is the ENERGY STAR program, which has statutory authority to use the EPA logo to endorse commercial products.

EPA staff stated that they have no record of who applied the logo to the case studies, who authorized its use, or who approved the posting of the case studies to the C²P² Website.

Conclusions

The C²P² Website did not disclose information about potential risks. Information concerning actual environmental damage associated with some unencapsulated uses of CCRs was not readily accessible from the C²P² Website. As a result, the Agency’s C²P² Website presented to the public incomplete information on these issues. EPA appeared to endorse commercial products in the C²P² case studies through use of the EPA logo and the absence of the required disclaimers. This use of the EPA logo is misleading, is prohibited by Agency policy and regulation, and demonstrates a lack of management control over the content of the C²P² Website. Although EPA’s C²P² Website stated that EPA has discontinued active participation in C²P², this disclaimer did not prevent the public from accessing and obtaining Agency information that is incomplete or misleading and prohibited by Agency policy in some cases.

Recommendations

We recommend that the Assistant Administrator for Solid Waste and Emergency Response:

1. Direct the immediate removal of the C²P² Website during the coal ash rulemaking process.
2. Identify the breakdowns in management controls that allowed actions prohibited by EPA ethics policies to occur and implement controls to establish accountability.

Agency Response and OIG Evaluation

Since our initial communication with EPA on June 23, 2010, EPA has removed access to the C²P² Website content and has made documents relevant to the rulemaking available in the docket. Recommendation 1 is complete and will be closed in OIG systems upon report issuance.

The Office of Solid Waste and Emergency Response (OSWER) provided Agency comments. We reviewed OSWER’s comments, met with OSWER officials to discuss the comments, and made changes to the report, as appropriate. Appendix A provides the full text of OSWER’s comments and OIG’s response.

OSWER agreed that the C²P² Website did not reflect the extensive discussion of the risks and benefits of CCRs in the proposed rule and also might be interpreted as implying EPA endorsement of some unencapsulated beneficial uses on which the proposal seeks comment. OSWER agreed that management should have exercised better controls to avoid any misunderstanding regarding use of the EPA logo and disclaimer according to Agency protocols. OSWER stated it takes the issues very seriously and acknowledged that it has already taken or is initiating appropriate action. In its comments, OSWER stated that other options to removing the C²P² Website could have included adjusting the content of the Website to be consistent with the content of the proposed rule and recommended that the OIG revise its recommendation. At the time the OIG made its recommendation, we believed removal of the Website was the most efficient action to take and was also consistent with EPA's self-initiated actions to stop its participation in the C²P² program during the rulemaking process. EPA did not provide information to demonstrate that updating the Website to be accurate and complete would be more efficient than Website removal.

OSWER agreed with revised Recommendation 2, and has proposed an acceptable corrective actions plan to address it. This recommendation is open with agreed-to actions pending. In its 90-day response to this report, OSWER should provide estimated or actual milestone completion dates for its planned training activities and its review of the process for Website content approval.

In its comments, OSWER requested that our report be revised to recognize that sand and gravel and large-scale fill applications are treated by EPA as disposal and not beneficial use. The draft report that OSWER reviewed did reflect this position. Specifically, the third bullet on page 3 of the OIG's report states: "EPA considers certain unencapsulated applications, such as fill in sand and gravel pits and other large-scale fill applications, as disposal and not beneficial use. EPA states [in its proposed 2010 rule] that it does not recognize these practices as legitimate beneficial uses." However, the OIG does not agree with OSWER's comments that EPA has effectively conveyed this position prior to release of its proposed rule (see Appendix A for details).

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 90 calendar days. Your response will be posted on the OIG's public Website, along with our comments on your response. Your response should be provided in an Adobe PDF file that complies with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended. Please provide your response to Carolyn Copper at copper.carolyn@epa.gov. If your response contains data that you do not want to be released to the public, you should identify the data for redaction. You should include a corrective actions plan for agreed-upon actions, including milestone dates. We have no objections to the further release of this report to the public.

We will issue a final report that will discuss other OIG findings on whether EPA used accepted and standard practices in determining that CCRs are safe for the beneficial uses EPA has promoted. If there are questions, please contact Wade Najjum at (202) 566-0832 or najjum.wade@epa.gov, or Carolyn Copper at (202) 566-0829 or copper.carolyn@epa.gov.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed To Amount
1	5	Direct the immediate removal of the C ² P ² Website during the coal ash rulemaking process.	C	Assistant Administrator for Solid Waste and Emergency Response	07/02/10		
2	5	Identify the breakdowns in management controls that allowed actions prohibited by EPA ethics policies to occur and implement controls to establish accountability.	O	Assistant Administrator for Solid Waste and Emergency Response			

¹ O = recommendation is open with agreed-to corrective actions pending

C = recommendation is closed with all agreed-to actions completed

U = recommendation is undecided with resolution efforts in progress

Appendix A

OSWER Comments on OIG Draft Report and OIG Response

August 17, 2010

MEMORANDUM

SUBJECT: Response to Draft Early Warning Report: *Website for Coal Combustion Products Partnership Conflicts with Agency Policies; Project No. OPE-FY10-0007*

FROM: Mathy Stanislaus/s/
Assistant Administrator

TO: Arthur A. Elkins, Jr.
Inspector General

The Office of Solid Waste and Emergency Response (OSWER) reviewed the Office of Inspector General's (OIG) subject report and its recommendations. The purpose of this memorandum is to transmit our response to those recommendations and to address other significant issues raised in the report. The response is in two parts: first we address significant issues raised in the report, and second, we respond to the OIG's specific recommendations.

OIG FINDINGS

The OIG finds that EPA's Coal Combustion Products Partnership (C2P2) Website is inconsistent with the coal combustion residual (CCR) proposed rule because it does not identify large-scale fill applications as disposal, does not list known beneficial use damage cases, and does not emphasize EPA's concerns about beneficial use of unencapsulated CCRs in road embankments and agricultural applications.

OIG Response: This is an accurate representation of one of the OIG's findings. We also find that EPA appeared to endorse commercial products in the C²P² case studies through the improper use of the EPA logo and the absence of the required disclaimers.

As a general matter, OSWER agrees that the C2P2 Website was not fully in line with the proposed rule. The preamble to the proposed rule presents an extensive discussion of beneficial uses of CCRs. This discussion describes the full array of encapsulated and unencapsulated beneficial uses. It notes that EPA has some concerns about unencapsulated beneficial uses and seeks comment on these uses so that the Agency can make a more informed judgment about their safety in the final rule. The preamble also notes that EPA believes that certain fill applications of CCRs in fact represent disposal and references damage cases for these applications.

The C2P2 Website did not reflect the extensive discussion of the risks and benefits of CCRs in the proposal and also might be interpreted as implying EPA endorsement of some unencapsulated beneficial uses on which the proposal seeks comment. In this respect, the Website presented an incomplete picture of the Agency's current technical thinking on the safety of CCR beneficial uses. We believe that we addressed this concern at the time of the CCR proposal by suspending active EPA participation in the C2P2 partnership. However, our recent decision to terminate access to the Website should fully address the potential for confusion and misinformation resulting from inconsistencies between the Website and proposed rule. Nonetheless, the OIG report should be more precisely worded to differentiate between unencapsulated beneficial uses and fill applications which EPA considers disposal. The May 2000 Regulatory Determination expressly recognized damage cases associated with sand and gravel pits as landfill damage cases and thus involving disposal and not beneficial use. Therefore, OSWER did not believe extensive discussion of the damage cases on the C2P2 Website, which was devoted to beneficial use, to be appropriate or necessary. Linking these damage cases to unencapsulated CCR beneficial uses is inappropriate and misleading because the proposed rule cites no damage cases for these uses, nor do the sand and gravel pit damage cases provide such technical support. Moreover, the C2P2 Website did inform visitors to the site that the damage cases were associated with disposal (not beneficial use). A link to the damage cases was provided on the C2P2 Website with the following text to make it clear that the damage cases were associated with disposal:

The Fossil Fuel Combustion Waste page has information on damage cases relating to the placement of CCPs.³

Therefore, the OIG report should be revised to recognize that sand and gravel and large scale fill applications are treated by EPA as disposal and not beneficial use. Further, the report should make clear that EPA has no basis to imply that the damage cases regarding sand and gravel pits and large scale fill applications are in any way connected to unencapsulated beneficial uses and that, while the proposed rule raises some concerns about these uses, these concerns are not based on the damage cases.

OIG Response: We acknowledge OSWER's concurrence with OIG findings. OSWER has recognized that its C²P² Website contained an incomplete characterization of risks as well as information that gives the appearance of a government endorsement of commercial products, which is prohibited by Agency policy. OSWER has acted on, or developed plans to act on, the OIG's recommendation to address these problems.

OSWER makes comments regarding how it has treated the placement of CCRs in sand and gravel pits and fill applications. OSWER's comments attempt to demonstrate that EPA has clearly and consistently communicated its position that the use of CCRs in sand and gravel pits is disposal and not beneficial use and, therefore, any damage cases associated with sand and gravel pits cannot be considered beneficial use damage cases. OSWER's comments also attempt to demonstrate that the OIG has erroneously stated, or implied, that sand and gravel pits and large-scale fill operations have been strictly treated by EPA as beneficial use. To support its positions, OSWER cited information contained in the May 2000 Regulatory Determination and a statement

³ The abbreviation CCPs stands for coal combustion products; CCPs and CCRs are sometimes used interchangeably.

on the former C²P² Website: “The Fossil Fuel Combustion Waste page has information on damage cases relating to the placement of CCPs.”

The OIG cannot substantiate OSWER’s statement, “The May 2000 Regulatory Determination expressly recognized damage cases associated with sand and gravel pits as landfill damage cases and thus involving disposal and not beneficial use.” The OIG could find no references to ‘sand and gravel pits’ in the May 2000 Regulatory Determination. Moreover, we do not agree that a 2000 reference to landfill damage cases conveys the Agency’s position on appropriate beneficial uses of CCRs, given that the Agency expressly used its more current C²P² Website for that purpose. We do not agree that the statement – “The Fossil Fuel Combustion Waste page has information on damage cases relating to the placement of CCPs” – which appeared on EPA’s C²P² Website, effectively conveys an Agency position that it considers sand and gravel pits and large-scale fill applications as disposal and not beneficial use. Therefore, we do not agree with a conclusion that, in the past, EPA has consistently and clearly communicated that it considers sand and gravel pits and large-scale fill applications as disposal and not beneficial use.

The OIG’s report shows that EPA has taken a clear position in its 2010 proposed rule that it considers certain unencapsulated applications, such as fill in sand and gravel pits and other large-scale fill applications, as disposal and not beneficial use. Specifically, the third bullet on page 3 of the OIG’s report states, “EPA considers certain unencapsulated applications, such as fill in sand and gravel pits and other large-scale fill applications, as disposal and not beneficial use. EPA states [in its proposed 2010 rule] that it does not recognize these practices as legitimate beneficial uses.” However, EPA did not effectively communicate or convey this position on the C²P² Website or in the May 2000 regulatory determination as described in OSWER’s comments.

The second major finding of the OIG involves concerns about case studies that were placed on the Website – the case studies posted on the EPA Website, displayed the EPA logo, lacked disclaimers, and thus improperly implied Agency endorsement of the products or companies. OSWER agrees with the OIG findings that the case studies should have included disclaimers to underscore that EPA was not endorsing the products or uses involved. In adding some of the case studies to the administrative record for the rulemaking, we have removed the EPA logo and inserted disclaimer language. However, by quoting specific disclaimer language, we believe the report could erroneously suggest that the EPA regulations (5 CFR 2635) mandate a single formulation of the disclaimer. In actual fact, the Office of General Counsel (OGC) has approved use of other disclaimers and has specifically recommended use of the following disclaimer for the case studies from the Website that we are adding to the administrative record for the proposed rule: “Disclaimer of Endorsement: Reference herein to any specific commercial products, process or service by trade name, trademark, manufacturer, or otherwise, does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government.” Therefore, we recommend revising the report to recognize that different types of disclaimer wording are permissible and citing the disclaimer language the Agency is using for the CCR rulemaking.

OIG Response: The OIG acknowledges OSWER's concurrence with the finding that Agency endorsement of commercial products is implied through improper use of the EPA logo and lack of disclaimers. The report has been modified to state OSWER's position that OGC has determined that other disclaimers are permissible. To the extent that EPA is modifying its practices or language regarding disclaimers, it should also evaluate the need to formally update Agency directives or policies on these matters for transparency and staff awareness.

RESPONSE TO RECOMMENDATIONS

OIG Recommendation #1

Direct the immediate removal of the C2P2 Website until the Agency makes its final policy and regulatory determinations regarding beneficial use of all forms of CCRs.

COMPLETED.

OSWER Response: As the OIG notes in its report, OSWER has removed the C2P2 Website while the program is being re-evaluated during the rulemaking process, and thus OSWER has effectively implemented the OIG recommendation. Some relevant documents that form part of the technical support for the rulemaking have been placed in the rulemaking docket and are publicly available. The EPA logo was removed from all case study documents and appropriate disclaimers were included on the case studies before they were placed in the docket.

Procedurally, however, OSWER believes the OIG recommendation would be more appropriate if broadened to allow for other options. The OIG findings were of inconsistencies between the C2P2 Website and the proposal, which could be remedied in several ways, including removing the Website, or adjusting the content of the Website to be consistent with the content of the proposed rule. Therefore, OSWER recommends that the OIG recommendation be revised to encompass both options, and that it is appropriately within OSWER's discretion to respond to the findings by considering both approaches.

OIG Response: The OIG acknowledges OSWER's implementation of Recommendation 1. This recommendation will be closed upon report issuance. The OIG does not believe further modifications to the recommendation are needed. OSWER maintains its discretion and authority to modify future information that appears on the Website. The OIG recognizes that OSWER may have new or modified content related to beneficial uses of CCRs to place on a Website or have information to make available in the docket. In our opinion, an appropriate and efficient action to take during the rulemaking process is to remove (or block) the Website content, particularly the incomplete or misleading information. In our opinion, blocking all Website content is similar to actions EPA initiated itself to stop its participation in the C²P² program during the rulemaking. Because this recommendation will be closed upon report issuance, OSWER is not required to provide any additional information for this recommendation in its 90-day response to this report.

OIG Recommendation #2

Identify the breakdowns in management controls that allowed the violation of EPA standards and ethics policies, and implement controls to establish accountability. If staff person(s) responsible for these violations can be identified, EPA should take appropriate administrative actions based on the degree to which the violations of Agency policies were intentional.

OSWER Response: OSWER agrees that management should have exercised better controls to avoid any misunderstanding regarding use of the EPA logo and disclaimer according to Agency protocols. As a result, OSWER will provide training to the Office of Resource Conservation and Recovery's (ORCR) management team on the EPA standards and policies associated with the use of the EPA logo and endorsement issues.

OSWER agrees that policies and procedures were not followed. However, OSWER disagrees with the use of the word "violation" as found in this OIG recommendation because OSWER is not aware that any formal legal determination has been made. OSWER recommends the term "violation" be revised to reflect that policies and procedures were not followed.

Additionally, ORCR is reviewing its process for Website content approval to strengthen management's role. However, as noted in the OIG report, OSWER has not been able to identify a responsible person or persons given the date when these documents originally began being posted (i.e., 2003).

OIG Response: The OIG acknowledges OSWER's agreement with Recommendation 2, that better management controls should be applied to avoid improper use of the EPA logo and ensure proper use of Agency disclaimers. OSWER's proposed corrective actions plan to provide training to the ORCR management team on the EPA standards and policies associated with the use of the EPA logo and endorsement issues, and to review its process for Website content approval to strengthen management's role, is acceptable. This recommendation is open with agreed-to actions pending. In its 90-day response to this report, OSWER should provide estimated or actual milestone completion dates for its planned training activities and its review of the process for Website content approval. Where applicable, the OIG has modified its use of the word "violation" with Agency standards or policies to reflect that prohibited actions or actions that do not conform to Agency policy occurred. The OIG also acknowledges that OSWER has been unable to determine the person(s) responsible for improper use of the EPA logo and has modified the final report recommendation.

In conclusion, OSWER appreciates the opportunity to review this OIG Draft Early Warning Report. OSWER clearly takes the issues very seriously and, as stated above, has already taken or is initiating appropriate action.

Appendix B***Distribution***

Office of the Administrator
Assistant Administrator for Solid Waste and Emergency Response
Principal Deputy Assistant Administrator, Office of Solid Waste and Emergency Response
Agency Follow-up Official (the CFO)
Agency Follow-up Coordinator
General Counsel
Associate Administrator for Congressional and Intergovernmental Relations
Associate Administrator for External Affairs and Environmental Education
Acting Director, Office of Resource Conservation and Recovery, Office of Solid Waste and
Emergency Response
Acting Deputy Director, Office of Resource Conservation and Recovery, Office of Solid Waste
and Emergency Response
Director, Resource Conservation and Sustainability Division, Office of Resource Conservation
and Recovery, Office of Solid Waste and Emergency Response
Audit Follow-up Coordinator, Office of Solid Waste and Emergency Response
Inspector General