



“Suppliers to the Construction Industry”

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Honorable John D. Rockefeller IV
West Virginia State Senator
405 Capital Street, Suite 508
Charleston, WV 25301-1747

September 22, 2009

Dear Senator Rockefeller,

The Builders Supply Association of West Virginia strongly opposes any designation of coal combustion products (CCPs) as hazardous waste. Such action would have significant and long lasting effect upon our State’s willingness to beneficially re-use fly ash and other CCPs by destabilizing their markets. Regulatory schemes that would designate these materials as hazardous for purposes of disposal will stigmatize them and eliminate many examples of environmentally and socially sound beneficial use. CCP disposal standards can and should be addressed without unnecessarily stigmatizing resources with high potential for safe beneficial use as a preferred alternative to disposal. We welcome dialogue with the Agency and the environmental community to ensure that regulatory frameworks promote the safe beneficial re-use of CCPs.

RCRA requires that the EPA consider the “current and potential utilization” of CCBs in evaluating its regulatory options for CCBs {See RCA§ 8002(n) (8)}. EPA and the States have consistently recognized that regulating CCBs as hazardous waste under Subtitle C would adversely impact their beneficial use. Such a result would not be consistent with RCRA’s directive that EPA considers such beneficial uses in evaluating CCB regulatory options. On the other hand, regulation of CCBs under RCRA Subtitle D would not adversely impact CCB beneficial use, while at the same time allowing for the development of federal regulations that would ensure that CCBs are managed in a manner of human health and the environment.

On May 22, 2000, the EPA published its final Regulatory Determination on Wastes from Fossil Fuels in which the Agency concluded that these materials “do not warrant regulation under subtitle C of RCRA.” EPA also stated that it did “not wish to place any unnecessary barriers on the beneficial uses of these waste, because they conserve natural resources. Reduce disposal cost and reduce the total amount of waste destined for disposal.

The concern with the impact of hazardous waste regulations is even greater now. In 1999, CCP utilization was estimated to be 30% or approximately 30 million tons annually. In 2008, that number had risen to 43% and 56 million tons annually nearly doubled the tonnage reported in 1999. This is a remarkable achievement, considering total tonnage of CCPs has grown significantly during the same period.

One of the reasons for a significant increase in CCP beneficial use rates since EPA's 2000 Final Regulatory Determination has been the reliance of State regulatory agencies, CCP producers and marketers on the EPA's decision. The Final Regulatory Determination was issued after a vigorous public discussion that gave industry confidence that matters pertaining to a hazardous waste designation were settled and that they could move forward on beneficial use implementation with little fear of retroactive liability. Many CCP producers began increasing capital investments in facilities needed to direct CCPs to beneficial use rather than disposal. Clearly defined state regulations encouraging beneficial use have supported the development of a robust market for CCPs in a manner protective of the public health and environment. State policies encouraging CCP beneficial use provide a powerful incentive to producers and marketers of CCPs.

If the EPA were to reverse its Final Determination and assign a hazardous waste designation for CCPs, even for the limited purpose of disposal operations, we believe it would have a devastating effect on the beneficial use resource. Producers, marketers and users of CCPs would be confronted with myriad new uncertainties and perceived risks associated with marketing, handling, transporting and utilizing CCPs. By impeding the beneficial use of CCPs, a hazardous waste designation would have the unintended consequences of dramatically increasing the volumes of materials disposed and eliminating the significant environmental, economic, and sustainability benefits accomplished by beneficial use. The valuable mineral resources contained in coal combustion products need to be matched nationally to environmentally sustainable practices rather than destined for disposal. The net effect will be an increase in the amount of these mineral resources wasted and disposed, and at the same time create an increase in the mining of essentially the same "natural" minerals with associated environmental production impacts.

Any proposal to regulate disposal of CCPs as "hazardous waste" threaten to undo the considerable progress that industry, in partnership with EPA, has made to increase CCP beneficial use such as "green building". Nearly 30 years of technical study with high scientific integrity has concluded that there is no basis for a hazardous waste designation for CCPs-for disposal or beneficial use. Similarly, going back to 1980, years of federal regulatory determinations have also concluded that a hazardous waste designation is unwarranted. And most importantly, a hazardous determination would undo and nearly completely stop beneficial uses for all CCPs.

In 2005, the American Coal Council performed an economic assessment of the impact that the CCP industry has on the nation's economy. At that time, it was estimated that the combined direct and indirect economic benefits that CCPs provided was approximately \$4.5 billion. That number has grown substantially since 2005 since production and utilization has increased nearly ten percent and green building has expanded even more since the study was completed. This incorporation of CCPs into the "green supply chain" has created jobs and has been used in countless sustainable projects that illustrate the long term benefits of products containing CCPs as well as reducing green house gasses and providing locally available materials to many sites. Reducing the amount of waste generated in this nation, while reducing the cost of projects and conserving other materials for higher values of use are essential elements

of a more sustainable America. Each year in this State we are faced with production of concrete materials utilizing alkali silica reactive aggregates, the production of these materials for roads, bridges, schools, airport projects and even flood control dams (such as Bluestone) would at times not be possible or at best not economical if not for the utilization of Fly Ash through a mitigation process. Highway projects in the Southern part of the State as well as projects along Corridor H would not be possible without the retarding effects of Fly Ash with regard to the set time of ready mixed concrete.

We believe that a hazardous waste designation is not supported by nearly three decades of EPA study and formal determinations marketed by strong scientific integrity. The regulation of CCP disposal as non-hazardous waste under RCRA Subtitle D will insure protection of human health and the environment without unnecessarily stigmatizing resources that have the high potential for safe beneficial use as a preferred alternative to disposal. This approach will insure that CCPs are safely managed while continuing to promote and expand their beneficial use.

Thank you for considering the Builders Supply Association of West Virginia's views.

Respectfully,

Dale W. Hill
Executive Director

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