

LIONEL RIVERA
MAYOR

CITY OF COLORADO SPRINGS

September 29, 2009

National League of Cities
1301 Pennsylvania Avenue NW
Suite 550
Washington, DC 20004
Attn: Ms. Carolyn Berndt

U. S. Conference of Mayors
1620 Eye Street, Northwest
Washington, DC 20006
Attn: Ms. Judy Sheahan

Dear Ms. Berndt and Ms. Sheahan:

As Mayor of the City of Colorado Springs, which owns and operates a 4-service municipal utility (Colorado Springs Utilities), I am writing to inform you of a pending proposal by the U.S. Environmental Protection Agency (EPA) which may seek to regulate as a hazardous waste, coal ash generated during the combustion of coal to produce electricity (referred to as coal combustion byproducts or CCBs). Listing CCBs as hazardous waste would have dramatic adverse consequences for us and our ratepayers due to the increase in costs associated with managing and disposing of CCBs as well as the lack of availability of CCBs for construction projects. We wish to register our strong opposition to regulating CCBs as hazardous waste and urge your respective organizations to send comments to the EPA by October 14th opposing the designation of CCBs as hazardous waste. October 14th is the deadline the EPA has established for accepting comments from state/local officials and their trade associations.

We agree with the position expressed nearly universally by state environmental agencies, state transportation authorities, state public utility commissions, members of the U.S. Congress and virtually all industry groups that EPA should regulate CCBs as *non*-hazardous waste. Regulating CCBs pursuant to a federal non-hazardous waste program would allow for the imposition of management and disposal controls on CCBs that are fully protective of human health and the environment without unduly impacting the beneficial uses of CCBs and imposing substantial unwarranted costs on cities and municipalities across the nation.

In contrast, the regulation of CCBs as hazardous waste could require us to dispose of CCBs generated during the production of electricity at commercial hazardous waste disposal facilities. There are very few such facilities in the United States, and these facilities have limited capacity and impose substantial

costs for the disposal of hazardous wastes. The costs of disposing of CCBs will be substantially greater if CCBs are regulated as hazardous waste than if CCBs are regulated as non-hazardous. These costs will be borne directly by the citizen ratepayers in Colorado Springs, notwithstanding the fact that CCBs can be regulated as non-hazardous waste while ensuring the safety of the public and the protection of the environment. Furthermore, because the few commercial hazardous waste disposal facilities are often located great distances from the generation of electricity (and CCBs), the costs of transporting significant volumes of CCBs to these facilities would substantially increase the already high costs of disposal of CCBs as hazardous waste.

Currently, we dispose of our CCBs at our own permitted landfill site at a cost of approximately \$7 per ton. We expect that costs to dispose of CCBs at a RCRA-permitted landfill would be on the order of \$70 per ton. On an **annual** basis, our costs for transportation and disposal would increase from \$1.1 million to \$11 million. This does not even include the additional costs to retrofit our plant equipment to Subtitle C requirements, or the significant administrative costs for each plant becoming a large quantity generator of hazardous waste. This would require the addition of human resources, and we are already challenged to provide sufficient staff to meet customer needs. We are currently regulated by the State of Colorado to dispose of our CCBs at our site, including having to conduct groundwater monitoring. There is no incremental benefit to human health or the environment by having to dispose of CCBs at a hazardous waste landfill.

The listing of CCBs as hazardous waste will also significantly reduce the opportunities for beneficially using these materials, which could impact the cost and availability of materials for a variety of construction projects. As detailed in a letter to EPA, the American Concrete Institute maintains that due to potential liability concerns CCBs will not be used in concrete and other construction materials if regulated as hazardous waste. Unavailability of CCBs could increase the costs and/or seriously delay projects in Colorado Springs including road construction projects which often include substantial quantities of fly ash (a CCB). We have also been evaluating other construction-related uses in partnership with private companies, such as in bricks and concrete blocks. Regulating CCBs as hazardous waste would virtually eliminate markets for beneficial re-use of the material.

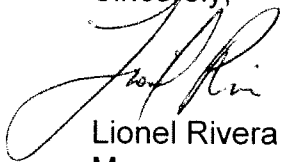
It is critical for the EPA to understand that these unnecessary increases in costs for the disposal and transportation of CCBs as hazardous wastes as well as construction projects that use CCBs as construction materials are taking place in the context of drastic cuts in the services many cities and municipalities have had to impose during these challenging economic times. Diverting more financial resources to the management of CCBs as hazardous waste will have further negative consequences for Colorado Springs Utilities and our ratepayers and compound the difficulties of managing already tight budgets in the face of already

having to make multi-million dollar investments to meet existing and new state and federal environmental mandates.

In light of the issues addressed above, I again urge your organizations to send comments to the EPA registering strong opposition to the regulation of CCBs as hazardous waste. The deadline for the comments to the EPA is October 14th, 2009.

Please contact the Government Affairs Manager (Andy Colosimo, (719) 668-8005 or the Environmental Services Department Manager (Dave Padgett, (719) 668-8679) for Colorado Springs Utilities with any questions. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Lionel Rivera". The signature is stylized with a large, sweeping initial "L" and "R".

Lionel Rivera
Mayor
City of Colorado Springs