

FLORIDA ELECTRIC POWER COORDINATING GROUP, INC. (FCG)

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April 24, 2009

Mr. Matt Hale
Director, Office of Resource Conservation and Recovery
United States Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
MC 5301P
Washington, D.C. 20460

Re: Federal Regulation of Coal Combustion Products

Dear Matt:

This letter is being submitted on behalf of the Florida Electric Power Coordinating Group, Inc. Environmental Committee (FCG). The FCG is a nonprofit association of twenty-five (25) investor-owned, municipally-owned, and cooperatively-owned electric utilities engaged in the business of providing the great majority of electric power to the public in the State of Florida. The FCG understands that the U.S. Environmental Protection Agency (EPA) is presently evaluating whether to depart from its current regulatory position that materials resulting from the combustion of fossil fuels (coal combustion products or CCPs) are to be regulated by the states, exempt from federal hazardous waste regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA).

EPA's current position was established after conducting several extensive studies regarding coal combustion products as directed under the Bevill amendment to RCRA. In the agency's March 1999 *Report to Congress on Wastes from the Combustion of Fossil Fuels*, EPA concluded that "[c]urrent management practices and trends and existing state and federal authorities appear adequate for protection of human health and the environment." Report to Congress, 3-73. While the Tennessee Valley Authority (TVA) coal ash release in December 2008 focused renewed attention on the question of the need for federal regulation of CCPs, the FCG believes that federal regulation of CCPs as hazardous waste under Subtitle C of RCRA would be misdirected and result in significant adverse consequences.

If EPA were to now mandate RCRA Subtitle C regulation for CCPs, such a decision by the agency would result in broad-based economic, as well as environmental harm. The economic impacts would affect every industry sector that either burns coal as an energy source or uses the byproducts of coal combustion in the manufacture of products, affecting utility ratepayers, as well as purchasers of consumer goods, employees, and shareholders alike. Substantial economic impact will result from such an EPA action through the added costs of management of this material under Subtitle C of RCRA requiring appropriate treatment, storage, or disposal at permitted RCRA

hazardous waste management facilities. In short, this means that much of this material may need to be transported and disposed of in RCRA Subtitle C land disposal facilities. This is especially significant for FCG members since such facilities do not exist in Florida, as they are specifically prohibited by state law in Section 403.7222, Florida Statutes. As a result, this material (generated in large quantities) would have to be transported out of state to appropriate facilities, thereby, increasing substantially the operation costs of Florida electric utilities. The FCG has conservatively estimated that Subtitle C landfill disposal costs for coal combustion products generated by Florida electric utilities would exceed a half billion dollars annually. Many of these same concerns have been expressed by State of Florida officials in the letter from the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) on these matters dated April 1, 2009 (attached). See ASTSWMO Letter, page 5.

The adverse environmental impacts may be less obvious but are just as significant. EPA noted with broad approval in its 1999 Report to Congress the diversity of beneficial uses of these materials that reduce the volume of waste that must be landfilled. These uses include incorporation as a raw material in the production of concrete and gypsum wallboard. Indeed, in some applications, these materials are uniquely environmentally beneficial. Even the hint of federal hazardous waste regulation would stigmatize these materials and ultimately dry up the markets that the electric utility industry has developed through years of diligent environmental and economic research. If these beneficial uses are curtailed as a result of Subtitle C Regulation, CCPs would need to be replaced by mined virgin mineral resources instead, resulting in greater environmental impacts from the mining, processing and transportation of these minerals. An EPA revised regulatory approach would run counter to the goals of RCRA to promote ways of reducing the disposal of solid waste by encouraging properly conducted recycling and reuse of such waste. Again, similar concerns have been articulated by State of Florida representatives. See ASTWMO Letter, Compilation of State Comments, Page 2.

The FCG believes that EPA need not consider a regulatory approach under Subtitle C of RCRA in light of the information that has been provided to the federal agency describing the characteristics of the coal combustion products and their associated management practices throughout the United States supporting the position and demonstrating that coal combustion products do not exhibit the characteristics of a hazardous waste. In fact, Florida electric utilities submitted information to Florida environmental officials regarding the management by FCG members of electric utility ash and other combustion wastes resulting from the generation of electricity. That information was submitted in 1994 to Florida Department of Environmental Protection (FDEP) representatives in the context of Florida's regulation of solid waste management facilities (contained in Chapter 62-701, Florida Administrative Code) to assist the state agency in formulating its industrial solid waste management regulatory provisions. That report identified for FDEP that these combustion wastes were being managed responsibly and posed no risk to human health and the environment. In that report which was favorably received and accepted by FDEP, the FCG provided Florida environmental officials with information supporting that position and demonstrating that coal combustion products do not exhibit the characteristics of a hazardous waste.

In summary, Florida's and other states' solid waste programs are fully adequate to ensure the safe management of CCPs. There is no technical justification for regulating such material as hazardous waste. Regulation of CCPs as hazardous waste would have a devastating impact on beneficial use of these materials and would unnecessarily burden and complicate Florida's waste regulatory program.

The FCG very much appreciates EPA's consideration of its comments in this matter. Should you have any questions regarding our comments, please contact Tanya Portillo at (813) 207-7981.

Sincerely,

A handwritten signature in black ink that reads "Paul Carpinone" with a stylized flourish at the end.

Paul Carpinone, Chair
FCG Environmental Committee

Enclosure

C: FCG Environmental Committee
FCG Solid Waste Subcommittee
Ms. Tanya Portillo
Mr. Mike Petrovich