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November 23, 2009

Honorable Lisa Jackson, Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave. NW
Washington, DC 20460

Matthew Hale, Director
Office of Resource Conservation & Recovery
United States Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

Re: USEPA Anticipated Rules for Coal Combustion Waste.

Dear Administrator Jackson and Director Hale:

I am writing on behalf of the Michigan Concrete Association (MCA), a statewide trade association that provides services to the concrete industry and acts as an educational resource for the industry and consumers. The MCA has deep concerns regarding the Environmental Protection Agency's (EPA's) anticipated development of Resource Conservation and Recovery Act (RCRA) regulations for coal combustion products (CCP). The MCA has numerous members that currently beneficially utilize CCP, thus any action EPA ultimately takes has the potential for far-ranging and serious ramifications for not only MCA members, but for the ready mixed industry as a whole, along with producers, manufacturers, and distributors of products that incorporate and utilize CCP.

It is the MCA's understanding that one option EPA may be considering is regulating CCP as a hazardous waste under RCRA Subtitle C. It is also our understanding that EPA may exempt some types of CCP that are beneficially reused from the hazardous waste designation. The MCA has serious misgivings regarding any approach that would designate CCP as Subtitle C hazardous waste, even if beneficial use of CCP was exempt from hazardous designation. For many producers and consumers, the designation will be a distinction without a difference, seriously imperiling the concrete industry's beneficial use of CCP due to the misperceptions of the public that CCP is truly hazardous in any meaningful way.

EPA's previously consistent position has been that CCP does not warrant regulation as hazardous under Subtitle C of RCRA. EPA has stated that it does



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not wish to place any unnecessary barriers on the beneficial use of fossil fuel combustion wastes so that they can be used in applications that conserve natural resources and reduce disposal costs. [See 65 FR at 32214, May 22, 2000.] EPA recognized that a significant portion of generated CCP, more than 23% in 2000, was beneficially reused. *Id.* Currently, more than 40% of CCP is beneficially reused, in large part due to the fact that EPA has not regulated CCP as a hazardous waste. EPA has stated that it supports increases in the beneficial reuse of CCP such as for additions to cement and concrete products, and for use in construction. *Id.* Further, EPA has stated that it has not identified beneficial uses that are likely to present any significant risk to human health or the environment. *Id.* at 32221.

The concrete industry's utilization of CCP in various products is a safe, environmentally sound practice that has a multitude of benefits including reducing the CCP that is landfilled or otherwise disposed of, the very issues that EPA is now grappling with. CCP is used to replace a portion of the cement used in various applications. The use of CCP reduces the need for raw cement, saves the energy and resources necessary to produce extra cement, and is an effective mechanism to deal with the problems associated with CCP waste disposal. The unique properties of CCP also increase concrete's durability and reduces concrete's susceptibility to damaging chemical reactions. In essence, the use and incorporation of CCP into various concrete applications is exactly the type of activity EPA should be continuing to encourage. Although this is EPA's stated goal, a hazardous designation for CCP will curtail or, more than likely, completely eliminate that use and exacerbate the existing CCP disposal issues.

A hazardous designation, even if an exemption was created for beneficial reuse, will certainly curtail the use of CCP in the concrete industry. Producers and users of CCP would have to meet established requirements for the exemption to apply, and any conditions that may be imposed. Moreover, CCP users would have to ensure proper handling, storage, and possible disposal of CCP as part of any beneficial use. Concrete producers and other users of CCP would likely face potential liability if there were any release of CCP, and would have to follow RCRA hazardous waste requirements. As importantly, any residues that contain CCP that are not incorporated into a product may have to be regulated as a hazardous waste, for instance, washwater from ready mix trucks that incorporated CCP into concrete. Given this framework, if CCP is designated as a hazardous waste, no exemption, no matter how carefully drafted, will foster the EPA's stated goals of CCP beneficial use. The perceived risks and potential for regulatory and civil liability, the stigma associated with a potentially hazardous material, and the increased costs of storage, management, and use will be enough for producers and users of CCP to curtail or halt their use. With the state of the economy, the concrete industry in particular has already suffered its share of economic challenges. The prospect of additional



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liability, costs, and regulatory oversight will do nothing but push many producers to further limit their exposure and to eliminate unnecessary costs. As a result, CCP will not be used in concrete production, and a material that would have been safely and effectively incorporated into various products will instead be destined for disposal, an important and key material will be removed from the market, costs to the public and the producer will increase, the need for raw materials will increase, impact to the environment from limestone excavation and kilning will vastly increase, and the environmental challenges in CCP disposal will only increase.

A cornerstone of the new EPA, as declared by Administrator Jackson, is to make environmental and regulatory policy decisions based on sound science and technical merit. Indeed, to “bring science back to the EPA.” The decision to regulate CCP as a hazardous waste, given EPA’s historical treatment of the material, and the fact that EPA has not identified any beneficial use that is likely to present significant risks to human health or the environment, is not based on sound science or technical merit. The practical reality is that if CCP is regulated as hazardous, no exemption, no matter how carefully crafted, will remove the stigma associated with its use or assuage business or consumer concerns once such a designation is made.

The MCA recognizes the position that EPA is in with regard to managing the disposal of CCP; however, in regulating the disposal of CCP by designating it a hazardous waste, EPA facilitates the unintended consequences of curtailing the beneficial reuse of CCP, even if some exemption is made for CCP that is beneficially used. Regulation of CCP disposal as a non-hazardous waste under Subtitle D of RCRA will ensure protection of human health and the environment while ensuring the continued safe and environmentally sound reuse of CCP. To that end, the MCA, on behalf of its members, urges EPA to carefully and fully consider the potential ramifications of its actions in CCP designation.

Thank you for your consideration of the MCA’s position on CCP. Please feel free to contact me directly should you have any questions on this matter.

Sincerely,

Daniel DeGraaf
Executive Director/CEO
Michigan Concrete Association