

# MIDWEST COAL ASH ASSOCIATION, INC.

Members:

American Coal Ash  
Association  
American Electric Power  
Ameren Energy  
Boral Material  
Technologies, Inc.  
Buckeye Industrial Mining  
Carmeuse Lime Company  
CEC, Inc.  
Charah, Inc.  
CIRCA  
Duke Energy  
Energy Industries of Ohio  
E. On-US, LLC  
FirstEnergy Corp  
Fly Ash Direct  
FMSM, Inc.  
Geosyntec Consultants  
Headwaters Resources  
Indiana Geological Survey  
Mineral Resource Tech., Inc.  
Ohio Coal Development  
Office  
Ohio State University  
RRI Energy  
Richmond Mill, Inc.  
Sphere One, Inc.  
Trans-Ash, Inc.

June 3, 2009

The Honorable Lisa Jackson, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building, Mail Code: 1101A  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Jackson:

The Midwest Coal Ash Association (MCAA) understands that EPA is currently evaluating its regulatory options for the management of coal combustion products (CCPs) and plans to propose federal management standards for CCPs by the end of the year. MCAA is a regional trade association representing the various members listed at left. The members of MCAA are directly involved in the generation, marketing, and beneficial use of coal combustion products. This issue involves an important component of the nation's overall energy policy, as EPA's decision could affect reliability of service from the electric grid, electricity costs from coal-fired plants, the continued viability of CCP beneficial use practices (which plays a significant role in the reduction of greenhouse gases, as substantiated in the February 12, 2008 EPA report: *Waste and Materials-Flow Benchmark Sector Report: Beneficial Use of Secondary Materials – Coal Combustion Products*), and the ability of certain power plants to remain in service. As you will note, the members of MCAA are primarily located, and do most of their business, in the coal producing and burning states of midwest U.S.A. Thus the concerns are real, to all members of our organization.

We understand that EPA is considering three options: (1) federal regulation of CCPs as non-hazardous solid waste under RCRA Subtitle D, (2) regulation as hazardous waste under RCRA Subtitle C, and (3) a hybrid approach where CCPs would be regulated as hazardous waste with an exception from hazardous waste regulation for CCPs that are managed in conformance with specified standards. We believe that EPA has wisely sought input from the states, as well as other stakeholders, regarding their preferences with respect to these various options. We understand that at least twenty states, in addition to the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) and the Environmental Council of States (ECOS), have responded to EPA's request for input, and

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that they all have taken the position that the best management option for regulating CCPs is option (1), regulation as non-hazardous waste under RCRA Subtitle D. MCAA believes that regulation as non-hazardous waste under RCRA Subtitle D is the only reasonable option being considered. As an association, we have been directly involved in the study of these materials over several decades. While EPA studied these materials, under the direction of the U.S. Congress, from the original Bevill Amendment in 1980, through the EPA April 2000 regulatory determination, and since then, MCAA, and separately its member companies, has been directly involved in providing the data to support the findings of EPA that these materials do not warrant regulation as hazardous waste.

In December of 2008, a dike at an ash impoundment owned by the Tennessee Valley Authority (TVA) failed, allowing coal ash to escape and thus affect the environment immediately adjacent to and down stream of the facility. To date, published data from sampling by TVA and the Tennessee environmental authorities has indicated that no existing regulatory limits have been exceeded. It appears that the failure was the result of an engineering design flaw in the dike structure. This is not being accurately portrayed by the national media, or by the environmental activists who have been so vocal in the aftermath of the failure. They would lead the public to believe that somehow the toxicity of the ash directly caused the dike failure. Although coal ash does contain trace elements of heavy metals, due to the heavy metals in the coal burned, the levels of these metals are extremely low, often lower than the natural soils in the area where they are managed, as explained in an American Coal Ash Association (ACAA) communication - Fact Sheet #2, 3/10/09, *Coal Combustion Products: Not a Hazardous Waste*, which can be found at the website: [www.coalashfacts.org](http://www.coalashfacts.org). This is exactly why EPA has determined several times that coal ash does not warrant regulation as hazardous waste.

MCAA and many of its members are also members of the ACAA. We understand that ACAA has provided input to the Agency on the regulatory evaluation of CCPs and agrees that regulation under RCRA Subtitle D is the only reasonable option being considered. ACAA provided extensive information and data on the impacts that a hazardous waste determination would have on the beneficial utilization of CCPs. Our membership agrees that a hazardous waste determination would severely cripple or eliminate the beneficial use of coal ash. Placing the *stigma* of hazardous waste on CCPs threatens to eliminate its use. And all the results that ACAA explained, such as increased disposal costs, the current limited availability of hazardous waste landfill capacity, the need to mine more natural resources to fill the void left when CCPs are no longer available for use, the increased CO<sub>2</sub> production from needing to again produce more portland cement, etc., are *real* results that will happen should CCPs be regulated as hazardous waste.

EPA has determined, more than once, that CCPs do not warrant regulation as hazardous waste. *The toxicity of CCPs has not changed.* Many states have improved their disposal management practices and have the infrastructure in place to manage CCPs in a manner that protects public safety and health. EPA acknowledged that in their 2000 determination and it was further acknowledged in a 2006 EPA/DOE report. The generators and users of CCPs, such as the members of MCAA and ACAA, are committed to continually improving the way we manage

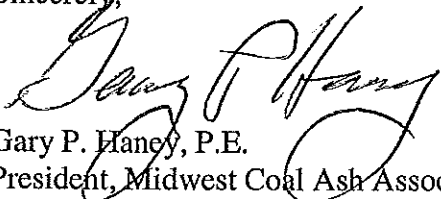
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these materials, in order to be able to utilize as much of the CCPs as possible in safe and responsible ways.

MCAA does not believe that there is evidence, new or old, that would support any regulatory option other than RCRA Subtitle D. Thus, we respectfully urge EPA to consider the evidence, and to work closely with the States in developing a performance-based federal program for CCPs under RCRA Subtitle D non-hazardous waste authority. This approach will ensure that CCPs are safely managed while continuing to promote and expand their beneficial use.

Thank you for your consideration of MCAA's views.

Sincerely,



Gary P. Hancy, P.E.  
President, Midwest Coal Ash Association

Electronic copies: Members