

November 20, 2009

The Honorable Cass R. Sunstein
Administrator, Office of Information and Regulatory Affairs
Office of Management and Budget
1650 Pennsylvania Ave, N.W.
Washington, D.C. 20503

Re: EPA Regulation of Coal Combustion By-Products

Dear Mr. Administrator:

On behalf United States Gypsum Company (USG), the largest manufacturer of gypsum wallboard in North America, I am writing to oppose EPA reclassification of Coal Combustion Byproducts (CCBs) as "hazardous waste" under federal law. More specifically, classifying FGD gypsum (considered a CCB) as a "hazardous waste" is not supported by the science, could have a significant adverse economic impact and would be harmful to the environment. We understand that the EPA's proposed CCB rule is now being reviewed by OIRA, and we ask that your office consider our comments on the potential economic impact on USG and the entire U.S. wallboard industry if the proposed EPA reclassification of FGD gypsum were to become law.

USG owns 25 wallboard plants in the United States, Canada and Mexico. Almost 30% of USG's wallboard in the U.S. is made with FGD (flu gas desulfurization) gypsum, a by-product of the scrubbing process that reduces sulfur emissions from coal burning power plants. FGD gypsum is the chemical equivalent of natural mined gypsum rock and has been used safely in gypsum wallboard all over the world for almost three decades. FGD gypsum is not fly ash, the most commonly known CCB. FGD gypsum is an engineered product that is manufactured to meet specific quality standards necessary for use in wallboard. The EPA has classified FGD gypsum as "non-hazardous" and encouraged its use in the production of wallboard, stating that "we support increases in these beneficial uses, such as...use in construction products such as wallboard."

The EPA indicated publically that as a result of the Tennessee Valley Authority fly ash spill last year, the Agency intends to establish federal regulatory authority over CCB *storage* facilities by changing the classification of all CCB's, including FGD gypsum, from the current classification of "non-hazardous waste" to "hazardous waste." Although the EPA has also indicated that it will continue to encourage the beneficial use of FGD gypsum in wallboard, the reality is that designating FGD gypsum as "hazardous waste" in any context, could reduce, if not eliminate, public acceptance of the material and have a dramatic negative impact on the market for products made with FGD gypsum.

USG and our national trade group the Gypsum Association have made the “environmental” case for FGD directly to the EPA and I will not repeat it here. However, it is clear the elimination of a consumer market for our product will end one of the great sustainability achievements that U.S. industry has accomplished. By making major investments in wallboard plants immediately adjacent to power plants that create FGD gypsum, the wallboard and power companies have eliminated the need to landfill millions of tons of material every year, natural gypsum rock deposits have been preserved, and greenhouse gas emissions from mining equipment and from thousands of delivery trucks and freight trains have been eliminated. The proposed EPA regulation will be sustainability “in reverse.”

In addition to the adverse environmental impact, the potential economic impact on our company, our employees and the communities where our plants are located would be dramatic. We are concerned that this impact has not been considered or appreciated by the EPA in its rule making process.

Plant Construction

In recent years, USG has built, or substantially rebuilt, six wallboard plants that make gypsum wallboard exclusively with FGD gypsum. Many other FGD-only plants have also been built by other wallboard manufacturers in the U.S. The cost of building each of these new plants is hundreds of millions of dollars. The plants are state of the art, high-speed and contain the latest wallboard manufacturing technology. However, many of the new plants - for example the USG plant in Washingtonville, PA, opened in 2008 - were built next door to coal burning power plants, the sources of the FGD gypsum used by the wallboard plants. By design, our Washingtonville plant can use only FGD gypsum. It has none of the grinding and crushing systems or equipment needed to use mined gypsum rock. While it is technically possible to redesign and retool a plant like Washingtonville, the cost is obviously huge. Infrastructure changes, as well as the purchase and installation of necessary crushing and grinding systems would cost millions of dollars.

Increased Transportation/Logistics Costs

The capital cost of converting an FGD gypsum plant to a gypsum rock plant would be dwarfed by the permanent increased cost of bringing mined gypsum rock to the facility. Washingtonville is not located near any natural gypsum deposits. That is not unusual for many new FGD wallboard plants built by our industry. (Among the benefits of FGD gypsum is that it allows the production of wallboard near the markets where the product is needed, not only where gypsum deposits are found.)

As a result, if the demand for FGD wallboard disappears due to an EPA reclassification, the viability of a plant like Washingtonville is at risk. Based on current estimates, the cost of bringing gypsum rock to a plant like Washingtonville – by ocean freighter, train, and truck – would increase annual costs at that plant by tens of millions of dollars. It is doubtful that even a new, high-efficiency plant could operate competitively with that cost burden.

Impact on the Local Communities

The USG Washingtonville plant employs 170 people when it is running at full capacity. Most USG employees at that plant both work and live in the Washingtonville community. However, it is not only USG jobs that are at risk if the plant is no longer profitable. A detailed analysis that was prepared prior to construction of the Washingtonville plant showed that the

economic benefits to the State of Pennsylvania, beyond the initial construction jobs and investment, included 850 new jobs that would be created from USG's need for raw materials, manufacturing supplies, freight delivery for up to a billion square feet of wallboard every year, and other necessary services and supplies. The study further projected that by 2025 the project would increase manufacturing output in Pennsylvania by \$3 billion, gross state product by \$1.8 billion and state revenue by more than \$200 million.

Washingtonville is just one example. There are five more USG plants and communities - as well as many more throughout the wallboard industry - that use only FGD gypsum. Jobs and economic benefits connected to every one of those plants could be lost if as a result of an EPA reclassification the plant must shut down, either because there is no demand for wallboard made with FGD gypsum or because the plant can no longer make wallboard at a competitive cost.

Conclusion

Finally, I want to reiterate that first and foremost USG opposes classification of FGD gypsum as "hazardous" waste because it is not hazardous. Although FGD gypsum is a by-product of coal combustion, it does not happen by accident. It is a highly engineered product that is manufactured specifically for use in one of the most basic consumer construction products - gypsum wallboard. It has been safely installed in millions of American homes over the last three decades - with the EPA's encouragement. An unwarranted "hazardous waste" designation would unfairly, but unavoidably, give the public the false impression that not only should they avoid the product in the future, but that they should be concerned about the walls that are already in their homes.

Thank you for the opportunity to comment on OIRA's review of the possible EPA regulation of FGD gypsum. We appreciate your willingness to consider our serious concerns.

Very truly yours,

John A. Donahue
Director, Governmental Affairs and
Senior Corporate Counsel

Cc: Mr. Mathy Stanislaus, Assistant Administrator - OSWER
Mr. Kevin Neyland, Associate Administrator, White House - OIRA
Ms. Cortney Higgins, Desk Officer, White House - OIRA
Mr. Matt Hale, Director - EPA
Mr. Doninic Mancini, Economist - OIRA