

February 17, 2010

The Honorable Lisa P Jackson  
Administrator, USEPA  
USEPA Headquarters  
Ariel Rios Building  
1200 Pennsylvania Avenue NW  
Washington, DC 20004

RE: Opposition to Hazardous Waste Regulation of Coal Combustion Byproducts

Dear Ms. Jackson:

The Minnesota Chamber of Commerce (MCC) is aware that the U.S. Environmental Protection Agency ("EPA") is preparing proposed regulations for coal combustion byproducts ("CCBs") under the Resource Conservation & Recovery Act ("RCRA"). MCC also understands that EPA has postponed release of a proposed rule due to the complexity of analysis for the waste designation. MCC writes to express our opposition to any federal regulation that would regulate CCBs as a RCRA hazardous waste under any form of Subtitle C.

The Minnesota Pollution Control Agency ("MPCA"), along with numerous other state environmental protection agencies, departments of transportation, public utility commissions, chambers of commerce, technical organizations, and trade associations have already weighed in with EPA on this topic and all have strongly opposed regulating CCBs as hazardous waste. These entities have argued CCBs don't meet the analytical definition of a hazardous waste and EPA has already determined on at least two prior occasions that hazardous waste regulation is not warranted for these materials. Any attempt now to regulate CCBs as hazardous would be based on bad science and result in poor public policy with significant economic impact. These organizations also unanimously agree that the beneficial uses of CCBs would be significantly impacted

The MCC also believes regulation of CCBs as a RCRA hazardous waste or even some hybrid which would "allow" certain beneficial uses would be extremely damaging to both the reuse industry and the State's economy. Our state's environment regulatory agency, the Minnesota Pollution Control Agency (MPCA), stated in a letter to EPA their concerns related to RCRA coal ash regulations under a Subtitle C designation. In expressing their opposition to regulating CCBs as Subtitle C, the MPCA stated "If EPA were to regulate coal combustion wastes as hazardous waste under Subtitle C of RCRA, this would effectively end the beneficial use of coal combustion wastes in Minnesota." The standing beneficial use determination for fly ash used in concrete, and other case specific beneficial use determinations for CCB's would immediately become inapplicable under the MPCA beneficial use program and rules.

MCC also agrees with the MPCA, other state environmental agencies, and end users of CCBs that even under the contingent hazardous waste option allowing certain beneficial uses, the stigma attached with a hazardous designation in the disposal setting would effectively eliminate the beneficial use markets. In this scenario end users would be unwilling to accept the risks for handling a material with a potential hazardous designation and the consequences of end-of-product-life considerations for something with a

hazardous designation. For example, the Minnesota Department of Transportation (MNDOT) has indicated to EPA it would not use coal ash products in transportation projects resulting in higher construction costs. The American Society for Testing and Materials (ASTM) believes even with a beneficial use option their standard for fly ash in concrete would be removed from construction specifications due to the connotations of a hazardous waste designation. Additionally, many producers of CCBs would not accept the risks associated with letting a hazardous material out of their control under joint and several liability provisions of RCRA.

The loss of beneficial uses for CCBs would have a detrimental effect on the environment and significant financial consequences for Minnesota businesses. The benefits of greenhouse gas emission reductions for incorporation of fly ash in concrete would disappear, raw cement production would increase resulting in greater resource consumption and increased raw material prices, and large tracts of land would be disturbed for new disposal facilities. In addition, a number of utility groups and state public utility commissions have warned EPA that over-regulation of CCBs will cause power plant closures and threaten delivery of reliable, cost-effective power. For investor owned, public, and rural electric cooperative utilities the loss of beneficial use revenues, the costs of permitting and construction of new larger disposal facilities, and sharply higher operating costs of managing CCBs as hazardous waste would be passed on to consumers in significantly higher electric rates. This would be especially hard on energy intensive industries (mining and minerals processing/pulp and paper), manufacturers (technology/heavy equipment), service providers (medical institutions/schools), and residential consumers in areas dependent on coal generated electricity such as Minnesota.

Given these serious concerns, coupled with the fact that EPA has previously determined coal ash did not warrant a hazardous waste designation, and at least 32 state environmental and resource protection agencies agree that CCBs can be safely regulated as such, we do not believe that EPA should consider proposing to regulate these materials as hazardous waste. While the events at the TVA Kingston facility are serious and should be addressed, the designation of CCBs as a hazardous waste would eliminate the many environmental benefits created through reuse, greatly increase the environmental footprint of coal fired power generation, and result in significant financial burden for the businesses and citizens of our state. We believe EPA should take a rational and reasoned approach to this issue and develop federal non-hazardous waste rules for CCBs under Subtitle D of RCRA.

Thank you very much for your consideration of our views on this issue. Should you or your staff have any questions, please feel free to contact me at 651-260-1610.

Sincerely,



Michael Robertson  
Minnesota Chamber of Commerce  
Environment & Natural Resources Policy Committee

Cc: The Honorable Cass Sunstein  
Administrator, Information and Regulatory Affairs  
Office of Management and Budget  
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