

Keith McCoy

Vice President

Energy & Resources Policy

November 6, 2009

Mr. Mathy Stanislaus
Assistant Administrator, Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
EPA – West Building
1301 Constitution Avenue, NW
Washington, D.C. 20004

RE: Regulation of Coal Combustion Byproducts under RCRA Subtitle D.

Dear Mr. Stanislaus:

On behalf of the National Association of Manufacturers (NAM), we oppose regulating Coal Combustion Byproducts (CCBs) as “hazardous waste” under federal environmental law. By way of background, the NAM is the nation’s largest industrial trade association representing small and large manufacturers in every industrial sector and in all 50 states. The NAM is the nation’s leading voice for the manufacturing economy, a sector that employs millions of Americans and generates \$1.6 trillion in Gross Domestic Product (GDP). The NAM’s mission is to enhance the competitiveness of manufacturers and improve American living standards by shaping a legislative and regulatory environment conducive to U.S. economic growth.

The NAM supports continued regulation of CCBs under Subtitle D of the Resource, Conservation and Recovery Act (RCRA) as non-hazardous waste. By allowing continued recycling and “beneficial use” of CCBs in the manufacture of concrete, paints, gypsum and some wood and plastics products, industry is able to access a cost-competitive feedstock for a variety of products. Furthermore, these “beneficial uses” for CCBs extend to the manufacture of products throughout the U.S. economy, including the beleaguered construction and housing sectors. Construction products such as fiber cement and roofing shingles also contain CCBs. A reclassification for handling as “hazardous waste” would raise the costs of these products and undermine an economic recovery that is attempting to take hold, threatening jobs.

Stricter regulation of CCBs would also raise energy costs, adding more competitive burdens on the manufacturing sector. Reclassification of CCBs as “hazardous waste” under RCRA Subtitle C would increase the price of electricity by increasing compliance costs for power generators. Stricter federal regulations would force coal-fired power plants to handle and store massive quantities of coal byproducts as hazardous waste, which would increase the operating cost of power generation. High energy prices disproportionately impact manufacturers, which use more than one-third of all energy consumed in the U.S.

Reclassification of CCBs would also force many manufacturers to pay for increased transportation costs, especially for those who operate facilities that do not have access to waste sites that handle hazardous waste. One NAM member has stated that the company’s transportation costs

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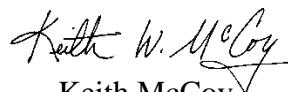
would rise to \$1 million per year if it were forced to ship its CCBs to a waste site designated for the handling of hazardous waste, which is several hundred miles from its operations.

The NAM also urges you to strongly consider input received by the Association of State and Territorial Solid Waste Management Officials who recommend continued regulation of CCBs under Subtitle D. These state officials make a compelling argument that they possess the necessary statutory and regulatory mechanisms to ensure safe handling of coal combustion byproducts. Furthermore, if EPA were to change classification of CCBs as hazardous waste, federal regulators would create a barrier to beneficial use, increase the amount of material handled in the waste stream and decrease the amount of material recycled by industry, thereby diminishing environmental quality. Continuing federal policies that promote environmental quality and U.S. competitiveness, through the efficiencies created by recycling and beneficial use, constitute a win-win for the manufacturing sector and its millions of U.S. workers.

Also, the NAM urges you to consider the stigma that would arise from reclassification of CCBs, even with exceptions carved out for beneficial use. One manufacturer has reported that the discussion surrounding possible reclassification under RCRA is resulting in the use of substitute ingredients making it less attractive to potential users because of tort liability concerns.

Thank you for the opportunity to comment on development of policies relating to the regulation of CCBs. We look forward to working with the Administration to craft policies that will balance environmental quality and economic growth. If you have any questions related to this issue, feel free to contact me or Bryan Brendle, Director of Energy and Resources Policy, at (202) 637-3176.

Sincerely,


Keith McCoy

- cc: 1. Cass Sunstein, Administrator, White House Office of Information and Regulatory Affairs (OIRA)
2. Kevin Neyland, Associate Administrator, White House - OIRA
3. Courtney Higgins, Desk Officer, White House - OIRA
4. Diane Poster, White House Council on Environmental Quality
5. Matt Hale, EPA