

Vern P. Powers

Mayor

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September 28, 2009

Mathy Stanislaus
Assistant Administrator
Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: EPA proposed listing of Coal Combustion By-Products as Hazardous Waste
City of Hastings, Nebraska

Dear Mathy Stanislaus:

As Mayor for the City of Hastings, Nebraska I am writing to inform you of a pending proposal by the U.S. Environmental Protection Agency which may seek to regulate coal ash by products (referred to as coal combustion by-products or CCBs) generated during the combustion of coal to produce electricity as a hazardous waste. The listing of CCBs as hazardous waste would have dramatic and adverse consequences for the City of Hastings. This is due to the increase in costs associated with managing and disposing of CCBs as well as the lack of availability of CCBs for beneficial use such as construction projects. We wish to register our strong opposition to the regulating CCBs as hazardous waste and request that you contact the National League of Cities and the Council of Mayors and urge these groups to send comments to EPA by October 1st, 2009 or as soon as possible thereafter opposing the designation of CCBs as hazardous waste.

We agree with the position expressed nearly universally by state environmental agencies, state transportation authorities, state public utility commissions, members of the U.S. Congress and virtually all industry groups that EPA should regulate CCBs as non-hazardous waste. Regulating CCBs pursuant to a federal non-hazardous waste program would allow for the imposition of management and disposal controls on CCBs that are fully protective of human health and the environment without unduly impacting the beneficial uses of CCBs and imposing substantial unwarranted costs on cities and municipalities across the nation.

Specifically the State of Nebraska regulates the storage and disposal of CCB's. The storage and disposal of CCB's are permitted and regulated by the Nebraska Department of Environmental Quality. The local CCB materials produced are non-hazardous. This is principally due the source of coal as being from the Powder River Basin of Wyoming. The source of coal greatly impacts the quality of the CCB produced. The local CCB materials are tested using the Toxicity Characteristic Leaching Procedure (TCLP). This test procedure is used by EPA to define toxicity under Resource Conservation and Recovery Act, 40 CFR part 261. These materials are tested regularly and are well below the limits established by the TCLP test and thus are non-hazardous. The use of CCBs allows the City of Hastings to reduce its carbon foot print by avoiding the manufacture of replacement products such as concrete cement.

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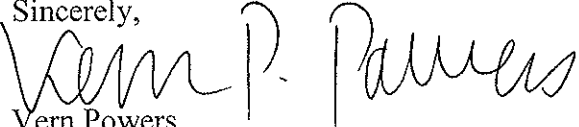
In contrast, the regulation of CCBs as hazardous waste could require the City of Hastings, Nebraska to dispose of CCBs generated during the production of electricity at commercial hazardous waste disposal facilities. There are very few such facilities in the U.S., and these facilities have limited capacity and impose substantial costs for the disposal of hazardous wastes. The costs of disposing of CCBs will be substantially greater if CCBs are regulated as hazardous waste than if CCBs are regulated as non-hazardous. These costs will be borne directly by taxpayers and/or ratepayers in Hastings, Nebraska notwithstanding the fact that CCBs can be regulated as non-hazardous waste while ensuring the safety of the public and the protection of the environment. Furthermore, because the few commercial hazardous waste disposal facilities are often located great distances from the generation of electricity (and CCBs), the costs of transporting significant volumes of CCBs to these facilities would substantially increase the already high costs of disposal of CCBs as hazardous waste.

The listing of CCBs as hazardous waste will significantly reduce the opportunities for beneficial use of these materials; this will impact the cost and availability of materials for a variety of construction projects. As detailed in a letter to EPA, the American Concrete Institute maintains that due to potential liability concerns CCBs will not be used in concrete and other construction materials if regulated as hazardous waste. Unavailability of CCBs could increase the costs and/or seriously delay projects in Hastings, Nebraska including road construction project which often include substantial quantities of fly ash (a CCB product).

It is imperative for EPA to understand that these unnecessary increases in costs for the disposal and transportation of CCBs as hazardous wastes, as well as construction projects that use CCBs as construction materials, are taking place in the context of drastic cuts in the services many cities and municipalities have had to impose during these challenging economic times. Many cities and states have had to cut essential services including fire and police departments, school teachers and emergency medical services. Diverting city and municipality resources to the management of CCBs as hazardous waste will interfere with the priorities of the City of Hastings, Nebraska and compound the difficulties of managing already tight budgets.

Please feel free to contact me at 402-461-2317 if you have any questions. Thank you for your attention to this matter.

Sincerely,


Vern Powers

Mayor

City of Hastings, Nebraska

Cc: Hastings City Council
Andrew Hanson, Office of Congressional and Intergovernmental Relations