BNSF RAILWAY

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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:

I write on behalf of BNSF Railway Company to urge the Environmental Protection Agency ("EPA") to consider the broad-ranging, unintended impact that will result from classifying coal ash, including fly ash, as a "hazardous waste" under Subtitle C of the Resource Conservation and Recovery Act. As one of the largest railroads in the nation, BNSF believes it is important to communicate our opposition to the proposal to reclassify fly ash.

Fly ash is one of the airborne coal combustion products ("CCPs") produced when coal is combusted to produce electricity. As with other CCPs, fly ash is captured and recycled for commercial use. Significant progress has been made over the past thirty years through sustainability initiatives so that today, more than 43% of the CCPs generated in the United States (over 50 million tons) are recycled and used beneficially each year. An unintended result of reclassification of fly ash as a hazardous substance would be to exponentially increase the amount of CCPs that must be disposed of in the nation's landfills and the loss of opportunity to further increase the green building uses for CCPs.

Fly ash itself presents a great recycling story — it is re-used in many applications. Its primary use has been in the production of concrete due to its demonstrated strengthening characteristics. Concrete manufactured with fly ash improves its durability, which increases the service life of concrete structures. Fly ash replaces the portland cement content of concrete and requires less water than cement, which in turn conserves limited natural resources and also reduces a project's water and equipment costs. Additionally, fly ash is used in earth stabilization, structural and embankment fills, pavement, and grout. Each of these applications is important to BNSF.

BNSF uses thousands of tons of concrete annually in our infrastructure to build roads, bridge structures, concrete ties, protective barriers, and hundreds of other construction

applications. Fly ash used for embankment stabilization is also a critical part of the railway network. Elimination of fly ash as a component could drive up the costs of that infrastructure. If fly ash is classified as a hazardous product and removed from construction materials, BNSF could see durability reduced in the concrete components we use. This would result in increased costs and degraded life spans, causing disruptions to our network as components must be more frequently replaced.

Certainly this concern is not limited to railroads. Given the amount of infrastructure re-building currently underway in the United States that involves the use of concrete, reclassifying fly ash as a hazard could represent a significant cost increase, plus an attendant loss of durability for concrete products made without fly ash. This would thwart some of the goals of the American Recovery and Reinvestment Act of 2009 that is so important to the Obama Administration's economic recovery plan.

Additionally, BNSF Railway and the entire rail industry handle thousands of tons of fly ash annually, transporting it to concrete manufacturers. Classifying fly ash as a hazardous waste could eliminate this revenue stream with a potential impact on rail industry employment across the United States.

BNSF understands that a significant concern arose after the failure of a containment dike at a wet ash disposal facility in Kingston, Tennessee, in December, 2008. However, issues related to the safety of coal ash disposal facilities and the proposed classification of fly ash itself as a hazardous material are wholly separate concerns. The public safety of impoundments will not be advanced by classifying fly ash as a hazardous waste. Instead, the EPA should work to ensure the safe management of CCPs through responsible, environmentally protective coal ash disposal regulations, without jeopardizing the sustainability objectives through beneficial use of CCPs. BNSF believes that safe beneficial use is a far superior alternative to disposal.

Finally, there is no technical or scientific basis to change the classification of fly ash to a hazardous commodity. The EPA has reviewed this issue numerous times, including determinations made in 1993 and 2000, and concluded that there was no need to classify fly ash as a hazardous commodity. BNSF urges that the EPA reach the same result after its current review.

Sincerely,

Roger Nober

RN:wlg

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