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November 10, 2009

The Honorable Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building, Mail Code: 11101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Jackson:

I am writing on behalf of Norfolk Southern Corporation and its railway subsidiaries (collectively, Norfolk Southern) regarding the potential classification by the Environmental Protection Agency (EPA) of coal ash, including fly ash, as a "hazardous waste" under Subtitle C of the Resource Conservation and Recovery Act (RCRA). As a transporter of coal combustion products (CCPs), including fly ash, and a user of construction materials in which fly ash is incorporated, Norfolk Southern urges the EPA to refrain from classifying coal ash as a hazardous waste. EPA's own prior technical studies, conducted during the two prior administrations, relating to coal combustion products, specifically fly ash, and the far-reaching negative impacts that would result from such classification dictate that classifying coal ash as a hazardous waste is unnecessary and inappropriate.

As you are aware, fly ash is a product of burning coal to produce electricity. It is removed from the plant exhaust gases and captured for reuse or disposal. Because of its physical and chemical properties, fly ash is useful in cement and concrete applications, makes a good mineral filler in hot mix asphalt applications, and improves the fluidity of flowable fill and grout when it is used for those applications. Mixing fly ash with recycled asphalt pavements contributes to stronger and longer lasting surfaces than those made with recycled asphalt alone.¹ Those same construction materials are instrumental to the goals of the American Recovery and Reinvestment Act of 2009 that is vital to the Obama Administration's economic recovery plan.

There is no technical or legal basis for now classifying fly ash as a hazardous waste. EPA has repeatedly determined that CCPs present few human health or environmental risks. In 1993 and again in 2000, the EPA reached these conclusions after several comprehensive assessments and investigations. Based on those evaluations, EPA has continued – and should continue – to regulate coal ash as a non-hazardous solid waste. Nothing has changed in the chemical composition or physical properties of fly ash since those studies.

The EPA should not undermine its policy of promoting the beneficial reuse of fly ash. There are at least two EPA efforts related to fly ash.¹ First, Resource Conservation Challenge (RCC) has targeted

¹ See www.epa.gov/osw/inforesources/news/2007news/02-fly-ash.htm.

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CCPs. The RCC is designed to facilitate changes in the economics and practice of waste generation, handling, and disposal by, for instance, promoting market opportunities for beneficial reuse. EPA has made significant progress over the past thirty years through sustainability initiatives so that today more than 43 percent of the CCPs generated in the United States (over 50 million tons) are recycled and used beneficially each year. Second, EPA's Office of Solid Waste has a specific goal to increase the use of coal fly ash in concrete by 50 percent (from 12.4 million tons per year in 2001 to 18.6 million tons by 2011).²

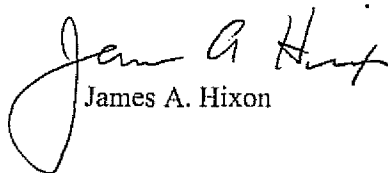
If regulated as a hazardous waste, products containing recycled CCPs would be stigmatized as products containing "hazardous" materials. That stigma would result in a dwindling market for those materials because (1) current beneficial use purchasers will cease to purchase those materials fearing other regulatory issues and (2) the cost of the materials – as well as the cost of disposal of the CCPs– would rise significantly. Therefore, EPA action that shrinks the market for materials containing reused CCPs would not advance the agency's goals of increasing reuse.

EPA's policies should promote the reuse of CCPs because such reuse has significant environmental benefits itself. For example, using one ton of fly ash as a replacement for cement reduces the equivalent of two months of an automobile's carbon dioxide emissions, and saves enough energy to provide electricity to an average American home for nineteen days. An unintended result of regulating coal ash as a hazardous waste 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 these green building uses for CCPs.

Finally, EPA also should not contemplate proposing a hybrid rule that would treat coal ash destined for beneficial reuse as a non-hazardous waste, while treating coal ash destined for landfill disposal or storage in ash ponds or surface impoundments as a "hazardous waste." Frankly, labeling fly ash destined for landfill or surface impoundments as a "hazardous waste" will result in all fly ash carrying that stigma. The range of potential beneficial uses for the identical material destined for reuse would dwindle for the same reasons that reuse would dwindle if all fly ash were generally designated hazardous waste. Ironically, EPA's potential hybrid treatment of coal ash may actually increase the amount of coal ash destined for storage or landfill disposal by stigmatizing the purchase of coal ash for beneficial reuse.

Norfolk Southern urges the EPA to reconsider any potential regulation of CCPs, including fly ash, as a hazardous waste and to refrain from any such endeavor.

Sincerely,


James A. Hixon

² *Waste and Materials-Flow Benchmark Sector Report: Beneficial Use of Secondary Materials - Coal Combustion Products, Economics, Methods, and Risk Analysis Division, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency, Washington, D.C. 20460 - Final Report, February 12, 2008.*