

**CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA**

WILLIAM L. KOVACS
SENIOR VICE PRESIDENT
ENVIRONMENT, TECHNOLOGY &
REGULATORY AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062
(202) 463-5457

November 17, 2009

**Re: EPA Proposed Rule Regulating Coal Combustion Byproducts
under RCRA Subtitle C**

Mr. Mathy Stanislaus
Assistant Administrator, Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 5101-T
Washington, DC 20460

Dear Mr. Stanislaus:

As your office evaluates regulatory options for managing coal combustion byproducts (CCBs) and prepares to issue a proposed rule setting forth new federal management standards, the U.S. Chamber of Commerce, the world's largest business federation representing more than three million businesses and organizations of every size, sector, and region, urges you to consider the potentially devastating economic effect of regulating CCBs as "hazardous waste" under Subtitle C of the Resource, Conservation and Recovery Act (RCRA).

While the Chamber recognizes the need for and supports regulation that is protective of human health and the environment, your agency – and virtually every State agency – has already concluded that regulating CCBs as non-hazardous under RCRA Subtitle D is the appropriate regulatory approach. In two separate reports to Congress, in 1988 and 1999, and more recently in a 2000 regulatory determination,¹ the Environmental Protection Agency (EPA) determined that CCBs do not warrant regulation as hazardous waste. In addition, there are robust State programs already in place that effectively implement CCB regulation and ensure their safe management as a non-hazardous waste under a Subtitle D program.

¹ 65 Fed. Reg. 32214 (May 22, 2000).

EPA's decision to revisit its regulatory approach to CCBs followed the recent release from a wet coal ash impoundment owned and operated by the Tennessee Valley Authority in Kingston, Tennessee. EPA subsequently conducted a survey of coal ash surface impoundments nationwide in an effort to assess their structural integrity and determine what improvements, if any, were necessary.² The Chamber believes this survey was both an appropriate and necessary precaution for identifying potential problems and ensuring that public health and welfare were being adequately protected, and where deficiencies were noted, the Chamber would support reexamining existing safety regulations for these impoundments. However, setting new federal management standards for *all* CCBs (i.e., fly ash, bottom ash, boiler slag, and flue gas desulfurization gypsum) and regulating them as hazardous waste, is unnecessary, will do nothing to further protect human health or the environment, and will have a significantly adverse economic impact. As such, the Chamber would strongly oppose any proposed rule that would regulate CCBs as a hazardous waste under RCRA Subtitle C.

Regulating CCBs as hazardous waste will increase the price of electricity for both businesses and consumers as power generators face higher compliance, transportation, storage, handling, and disposal costs. Gypsum manufacturers that have made capital investments in new synthetic gypsum plants in reliance on EPA's previous regulatory determination that CCBs are non-hazardous, would face catastrophic losses. Because CCBs are routinely used in a vast number of manufacturing processes, including concrete, paints, wood and plastics products, and even agricultural applications (as a soil conditioner), regulating them as hazardous will have widespread economic repercussions.

Even a proposed rule that includes an exception for "beneficial uses" will still create a stigma for CCBs and reduce its utilization. Manufacturers will likely employ alternative ingredients in light of potential tort liability implications, increasing the consumption of raw materials and raising product costs that ultimately will be passed on to consumers. This, in turn, will also increase greenhouse gas emissions as fewer industries – such as the cement industry, which uses substantial amounts of coal ash in its manufacturing processes – may be inclined to forgo utilizing CCBs altogether.

² EPA's initial conclusion was that some impoundments needed repairs, but none of them were in imminent danger of collapse or failure.

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The Chamber would welcome the opportunity to discuss with you further any of the issues raised in this letter. Thank you for considering our concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "William L. Kovacs", is centered on the page. The signature is written in a cursive style with a light gray background behind it.

William L. Kovacs

cc: Cass Sunstein
Kevin Neyland
Cortney Higgins
Matt Hale