The Facts About Coal Ash Regulation

On June 21, 2010, the U.S. Environmental Protection Agency (EPA) proposed federal regulations to govern the disposal of coal ash and other coal combustion byproducts (CCBs) under the Resource Conservation and Recovery Act (RCRA). EPA proposed a range of options, including regulation of CCBs as hazardous waste under RCRA Subtitle C, as well as regulation of CCBs as non-hazardous waste under RCRA Subtitle D.

The issue of whether CCBs should be regulated as hazardous waste—the most stringent form of regulation available to EPA under federal law—has been thoroughly researched and evaluated. And, on four prior occasions, EPA has concluded that CCBs do not warrant regulation as hazardous waste under RCRA Subtitle C. The industry, as well as officials from virtually every state, agree with those prior conclusions and support the development of federal, non-hazardous waste regulation under RCRA Subtitle D; such regulation would be implemented by the states.

Subtitle C hazardous waste regulation by EPA eventually would impact every industry and government sector that uses coal as a fuel source, including, but not limited to, the electric utility, agriculture, and mining industries; universities; manufacturers; and pulp and paper producers. It would supersede existing state regulatory authority and impose overly stringent federal regulations. And it would threaten the continued beneficial use of CCBs. Given these potential consequences, it is important to get the facts straight about coal ash regulation.

FACT: The electric utility industry supports federal non-hazardous waste regulation of coal ash.

The electric utility industry supports the development and implementation of federally enforceable, non-hazardous waste regulations for coal ash that address both environmental protection and impoundment safety. The industry is willing to work with EPA to enhance the agency's existing enforcement authority under a non-hazardous waste program to ensure a consistent level of protection in all states, while avoiding the adverse implications of regulating CCBs as hazardous waste.

FACT: Coal ash does not warrant hazardous waste regulation.

EPA, the U.S. Department of Energy, the Federal Highway Administration, the Department of Agriculture, the Electric Power Research Institute, state agencies, members of academia, and many others have studied CCBs for nearly three decades. Using the criteria outlined in Subtitle C of RCRA, these entities have evaluated CCBs for toxicity levels, which have been found to be well below the criteria that would require a hazardous waste designation.

On four prior occasions—most recently under the Clinton Administration in 2000—EPA has determined that coal ash does ***not*** warrant regulation as a hazardous waste. Not only did EPA find that coal ash rarely, if ever, exhibits a hazardous waste characteristic, the agency also concluded that the states can safely manage coal ash under federal non-hazardous waste rules. Moreover, in its 2000 regulatory determination, EPA found that hazardous waste regulation would be environmentally counterproductive because it unnecessarily would stigmatize coal ash and impede its beneficial use, with the resulting loss of the significant greenhouse gas (GHG)-reduction benefits associated with coal ash beneficial uses.

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FACT: The states support the regulation of CCBs as non-hazardous waste.

Officials from virtually every state and several state associations, including the Environmental Council of the States (ECOS) and the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), as well as the U.S. Conference of Mayors, have weighed in to EPA with their support for a non-hazardous waste regulation.[1] EPA has noted that the states have the regulatory infrastructure to implement a federal non-hazardous waste program for CCBs.

FACT: According to a recent study, the Kingston coal ash spill did not cause significant health impacts.

TVA's December 2008 Kingston ash spill led EPA to reevaluate whether it designates coal ash as a hazardous waste. The Tennessee Department of Health (TDH), under cooperative agreement with the U.S. Department of Health and Human Services, comprehensively examined the potential health effects from the TVA Kingston coal ash release. In a draft report released in December 2009, TDH ***found that there were no significant human health impacts from the coal ash spill***. Despite the size of the release, TDH concluded that there was little potential harm to human health from the coal ash, but rather that the greatest threat appears to have been from the suddenness and size of the release itself, and not from the chemical or physical characteristics of the ash. The report concluded that, based on "environmental test results, [TDH] does not expect harm to health from touching, eating, drinking, or breathing the metals in coal fly ash."[2]

FACT: Hazardous waste regulation would threaten CCB beneficial use and GHG mitigation.

Currently, more than 50 million tons (nearly 45 percent) of CCBs are beneficially used each year in a variety of applications—many of which support sustainable construction practices. In fact, coal ash has been used for more than 80 years as a substitute for cement in concrete.

Since 2000, 435 million tons of coal ash have been recycled rather than sent to disposal facilities. Today, the beneficial use of coal ash has an annual impact of approximately $9 billion on the U.S. economy. According to EPA, 13.7 million tons of coal ash were recycled and used in place of Portland cement in 2007, saving the United States nearly 73 trillion BTUs of energy, which is equivalent to the annual energy consumption of more than 676,000 households. GHG emissions also were reduced by 12.4 million metric tons of carbon dioxide-equivalent emissions—roughly the annual GHG emissions of 2.3 million cars.[3]

RCRA requires that EPA consider the "current and potential utilization" of CCBs in evaluating its regulatory options for CCBs. EPA, states, and CCB marketers consistently have recognized that regulating CCBs as hazardous waste would impact beneficial use adversely. In fact, a hazardous waste label of any kind would end the beneficial use of coal ash in concrete. On the other hand, non-hazardous waste regulation of CCBs would not impact CCB beneficial use adversely, while ensuring that CCBs are managed in a way that protects human health and the environment.

FACT: Contrary to claims asserting otherwise, regulating coal ash as hazardous will not increase coal ash recycling.

EPA wrongly assumes that hazardous waste regulation will increase beneficial use. Organizations responsible for regulating coal ash, including state environmental experts, as well as coal ash users and recyclers and technical organizations responsible for establishing coal ash beneficial use standards, agree that regulating coal ash under any hazardous waste label effectively will end coal ash beneficial use practices due to liability, stigma, and marketing concerns.

FACT: Regulating coal ash as hazardous waste will impact power generation.

If EPA regulates coal ash as hazardous waste, the electric utility industry would face billions of dollars in increased costs. As a result, as much as 18 percent of current coal generation capacity in the country would be at risk of closure. Closure of these power plants could raise serious reliability and cost concerns for companies that provide electricity to millions of customers throughout the United States.

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[1] The Environmental Council of States and 27 state environmental agencies are individually on record as opposed to hazardous waste regulation. Additionally, 43 states are on record through an ASTSWMO survey and letter in opposition to hazardous waste regulation.

[2] Public Health Assessment. Tennessee Valley Authority (TVA) Kingston Fossil Plant Coal Ash Release. Prepared by Tennessee Department of Health, December 9, 2009.

[3] Testimony for the Record. U.S. Environmental Protection Agency. Committee on Environment and Public Works. United States Senate. January 8, 2009.