
There Is Strong Support For Regulating Coal Ash As Non-Hazardous Waste

In the coming weeks, the U.S. Environmental Protection Agency (EPA) intends to propose federal regulations to govern the disposal of coal ash and other coal combustion byproducts (CCBs)¹ under the Resource Conservation and Recovery Act (RCRA). EPA is considering a range of options, including regulation of CCBs as hazardous waste. 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.

Many groups and individuals—including state regulatory agencies; national, state, and local policymakers; and labor and industry groups and individual companies—agree with EPA’s prior conclusions and support the development of federal, non-hazardous waste regulation under RCRA Subtitle D. Here’s what they’re saying:

State Regulatory Agencies and Associations

- “EPA acknowledges that technically, CCW [coal combustion waste or CCBs] can be safely regulated as a non-hazardous waste under Subtitle D with the appropriate management standards. This Administration’s stated policy that regulatory decisions will be based on scientific evidence demands that CCW not be regulated a hazardous waste under RCRA Subtitle C.”
 - *The Environmental Council of the States, Letter to Mathy Stanislaus, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency, October 15, 2009*
- “In our view, the stigma and legal ramifications associated with using a ‘hazardous waste’ material could effectively eliminate the ability to use Fly Ash in highway construction, even if exceptions are made to allow its use for beneficial applications.”
 - *American Association of State Highway and Transportation Officials, Letters to U.S. Transportation Secretary Ray LaHood and EPA Administrator Lisa Jackson, November 23, 2009*
- “Arguably, municipal solid waste (MSW) presents more extensive environmental concerns than CCB. ... Logically, if Subtitle D [regulation] is adequate for MSW, then it certainly should be sufficiently protective for CCB.”
 - *Association of State and Territorial Solid Waste Management Officials, Letter to Matt Hale, Office of Resource Conservation and Recovery, U.S. Environmental Protection Agency, April 1, 2009*
- “Based on our past experience, it [is] our position that classifying CCW as a hazardous waste is not warranted and would place unnecessary barriers on its beneficial use/reuse in the future. We feel our approach of regulating CCW under the non-hazardous solid waste regulations is protective of both human health and the environment and is an effective and logical way to safely manage CCW.”
 - *Illinois Environmental Protection Agency, Letter to EPA Administrator Lisa Jackson, July 17, 2009*
- “If the EPA were to regulate coal combustion wastes as hazardous waste under Subtitle C of Resource Conservation and Recovery Act (RCRA), this would effectively end the beneficial use of coal combustion wastes in Minnesota.”
 - *Minnesota Pollution Control Agency, Letter to Matt Hale, Office of Resource Conservation and Recovery, U.S. Environmental Protection Agency, April 27, 2009*

¹ CCBs also are referred to as coal combustion waste (CCW) or coal combustion residuals (CCR).

- “[W]e believe that regulation of CCW under the current structure of RCRA Subtitle C is inappropriate given the level of environmental hazard posed by these materials. We remain deeply concerned that such a categorization would have a significant adverse impact to our ongoing successful efforts to beneficially reuse these materials.”
 - *Wisconsin Department of Natural Resources, Letter to Matt Hale, Office of Resource Conservation and Recovery, U.S. Environmental Protection Agency, March 16, 2009*

National, State, and Local Policymakers

- “It is important therefore that the final rule reflect a balanced approach that ensures the cost-effective management of CCBs that is protective of human health and the environment, while also continuing to promote and encourage CCB beneficial use. ... [W]e believe that the federal regulation of CCBs pursuant to RCRA’s Subtitle D non-hazardous waste authority is the most appropriate option for meeting these important goals.”
 - *Bipartisan group of 74 Members of Congress, Letter to EPA Administrator Lisa Jackson, June 18, 2009*
- “Regulation as a hazardous waste under Subtitle C would have far-reaching adverse impacts on CCW beneficial use. ... It is our concern that the regulatory stigma of a Subtitle C label, even with specific exemptions, could place unnecessary barriers to the future beneficial use of CCWs.”
 - *North Dakota Governor John Hoeven, Letter to EPA Administrator Lisa Jackson, October 16, 2009*
- “The U.S. Conference of Mayors strongly opposes the idea of labeling CCRs or CCBs as a hazardous waste.”
 - *The U.S. Conference of Mayors, Letter to Richard Mattick, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency, October 16, 2009*

Labor and Industry Groups and Individual Companies

- “We believe the evidence shows that it would not be appropriate to classify CCBs as hazardous waste.”
 - *Unions for Jobs and the Environment, Letter to EPA Administrator Lisa Jackson, September 19, 2009*
- “We strongly encourage the EPA to consider the negative implications of classifying fly ash as a ‘hazardous waste’ under Subtitle C of the Resource Conservation and Recovery Act (RCRA). ... A ‘hazardous waste’ designation, even with an exclusion for beneficial use, would cause the ASTM [American Society for Testing and Materials] standard for fly ash to be removed from project specifications due to concerns over legal exposure, product liability, and public perception. This will likely result in little or no fly ash being used beneficially in concrete or other applications that support sustainability objectives.”
 - *ASTM International Committee C09 on Concrete and Concrete Aggregates, Letter to EPA Administrator Lisa Jackson, December 22, 2009*
- “Designation of fly ash as a ‘hazardous waste’ will likely eliminate its inclusion in future project specifications for fear of possible legal exposure and liability. Such a designation would also likely lead to its removal from future national codes and standards for the same reason.”
 - *American Concrete Institute, Letter to EPA Administrator Lisa Jackson, September 4, 2009*
- “If the proposed reclassification of fly ash as a hazardous waste moves forward, it could substantially increase construction costs across the country, virtually overnight, especially for those projects that are currently in progress.”
 - *Lattimore Materials Company, Letter to EPA Administrator Lisa Jackson, September 9, 2009*

Visit www.uswag.org/ccbletters.htm to access letters from state officials, unions, local municipalities, small businesses, and other stakeholders that support non-hazardous waste designation for coal ash.