

**Statement of Thomas H. Adams, Executive Director
American Coal Ash Association
U. S. House of Representatives
Energy & Commerce Subcommittee on Energy and Environment**

April 14, 2011

Mr. Chairman, my name is Thomas Adams. I am the Executive Director of the American Coal Ash Association (ACAA). I would like to thank you for the opportunity to speak to you and the committee about one of America's greatest recycling success stories and how that success is endangered today by over-reaching Environmental Protection Agency regulatory proposals.

ACAA was established more than 40 years ago, in 1968, as a trade organization devoted to recycling the materials created when coal is burned to produce electricity. Our members comprise the world's foremost experts on coal ash (fly ash and bottom ash), boiler slag, flue gas desulfurization gypsum or "synthetic" gypsum, and other "FGD" materials captured by emissions controls. While other organizations focus on disposal issues, ACAA's mission is to advance the management and use of coal combustion products (CCPs) in ways that are: environmentally responsible; technically sound; commercially competitive; and supportive of a sustainable global community.

ACAA is not a large Washington DC-based trade organization. We are headquartered in Aurora, Colorado, and have only two full-time employees. We rely on our volunteer members to pursue an agenda that is mostly technical. For instance, to develop formal comments on EPA's Proposed Rule for regulating coal ash disposal, our members devoted more than 14,000 volunteer hours to reading, analyzing, and drafting our response. ACAA's membership is comprised of a diverse array of stakeholders, including academic professors and scientists, scientists within businesses associated with CCPs, former regulators, consultants, engineers, cement companies, coal ash marketers, CCP technology companies, international representatives within the CCP industry, and utility representatives.

I would like to emphasize that most of ACAA's members are small businesses comprised of people who have dedicated entire careers to the cause of recycling and improving our environment. It is these small businesses that are being hurt most by the regulatory uncertainty that EPA has created by proposing an unwarranted "hazardous waste" designation for coal ash when it is disposed.

ACAA strongly endorses the bills that were recently filed to prohibit EPA from regulating coal ash as a "hazardous waste" because those bills would resolve that regulatory uncertainty. We commend Representatives David McKinley and Bob Latta for their leadership in filing HR 1391 and HR 1405.

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When EPA proposed a potential “hazardous waste” designation for coal ash a year ago, the Agency cast a cloud over our recycling effort that has already caused coal ash users across the nation to decrease their specification and use of the resource. Simply put, people do not want to undertake the potential liabilities or risks of using a material that would be considered “hazardous waste” on the property of the people who produced it. Now it appears that EPA does not intend to finalize its proceedings for many more months or possibly years. Mr. Chairman, we have members who may not survive the wait.

The bills before the House now would prevent EPA from regulating coal ash disposal as a “hazardous waste” under Subtitle C of the Resource Conservation and Recovery Act – thereby resolving the uncertainty regarding the resource’s classification. The bills would not, however, prevent EPA from moving forward with improving coal ash disposal regulations. Under the “non-hazardous” regulatory approach also proposed by EPA and endorsed by the agency as recently as September of 2009, the engineering standards for coal ash disposal facilities would be essentially the same as under the “hazardous” approach. Wet impoundments would still effectively be phased out and dry landfill standards would be improved. Ironically, the improvements would also get implemented sooner under the non-hazardous approach.

EPA’s “hazardous waste” approach is not, therefore, “more stringent,” as some contend. The main difference between the “hazardous” and “non-hazardous” approaches boils down to who gets to enforce the new rules. Under the non-hazardous approach, EPA makes the rules and states enforce them. Under the hazardous approach, EPA makes the rules and enforces them directly. EPA seems to be willing to sacrifice an entire recycling industry just to get that disposal enforcement authority.

Let me be clear: ACAA is in favor of improved coal ash disposal regulations and supports federal regulation under the “non-hazardous” Subtitle D. In April 2010, the ACAA Board of Directors took the unprecedented step of approving a formal resolution establishing that position. The same resolution also clearly stated our opposition to any form of Subtitle C, hazardous waste rule for disposal.

It is important to remember that coal ash does not qualify as a hazardous waste based on its toxicity. The toxicity of coal ash is similar to or less than the toxicity of the materials it replaces in recycling applications. Furthermore, EPA has presented no environmental damage cases related to recycling of coal ash, despite decades of widespread use.

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It's also important to remember that the only people in favor of the "hazardous waste" approach are anti-coal environmental groups and a handful of companies that manufacture and market products that compete with recycled coal ash. Please allow me respond directly to three of their most common arguments:

- Supporters of the "hazardous waste" designation say that there is no evidence of a stigma associated with the hazardous designation. In fact, just the existence of EPA's proposal has created a stigma that is already affecting the beneficial use of coal ash in at least three ways:
 - Consumers of coal combustion products are beginning to remove the materials from their specifications because of uncertainty regarding the safety of the material or because of concern over potential legal liability from using it. Let me give you one example of each. The Los Angeles Unified School District has prohibited the use of coal fly ash in its concrete, and I quote: "until the EPA confirms fly ash to be a non-hazardous toxic waste." HR 1391 sponsor Rep. McKinley – who is a civil engineer outside of his service to Congress – has indicated that he has removed coal fly ash from his concrete specifications because of liability concerns. It is important to remember that it doesn't matter whether health or legal liability concerns are scientifically or legally justified. What matters is that people do not want to take the risks created by the potential "hazardous" designation and they can choose not to use the coal combustion products to avoid those risks. It takes significant assets to defend even unjustified lawsuits.
 - Manufacturers of products that compete with recycled coal ash have been fanning the stigma flames by citing the potential EPA "hazardous waste" designation. This has already occurred in markets for blasting grit, brick manufacturing, lightweight aggregate production, and concrete block manufacturing. One particularly egregious magazine advertisement featured a skull and crossbones for an illustration.
 - We are now beginning to see commercial liability insurance policies that contain exclusions for companies using products that contain fly ash. Examples of this disturbing development – as well as more examples of the other forms of stigma mentioned above – are being collected and made available by an organization that is separate from ACAA (Citizens for Recycling First) at this website: <http://www.recyclingfirst.org/pdfs.php?cat=9>

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- Supporters of the “hazardous waste” designation say that recycling rates will actually increase under a “hazardous waste” designation, citing the experience of a handful of other industrial byproducts. The materials cited by EPA include electric arc furnace dust, electroplating wastewater sludge, chat from lead and zinc mining, used oil, spent etchants and spent solvents. The problem is that none of those materials are anything like coal ash. Most of them actually qualify as a hazardous waste based on their toxicity. (Coal ash does not.) Almost all of them are reprocessed prior to recycling. (Coal ash is not.) Most of them get recycled in industrial processes, often by the same companies that produced the materials in the first place. (Coal ash is distributed for recycling by thousands of other companies in tens of thousands of public and residential locations all over the country.) Many of them are produced and recycled very small quantities. (Coal ash recycling is measured in the millions of tons.)
- Supporters of the “hazardous waste” designation say concerns raised by international standard setting organizations such as the American Concrete Institute and ASTM International have been somehow unfairly influenced by industry. In fact, these organizations are consensus based institutions whose memberships are comprised of a broad array of representatives from business, government and academia. These institutions place protection of public safety as their top priority. They have rightly raised the concern that it may not be appropriate to allow a material classified by EPA as “hazardous” in codes and standards designed to protect human health. In contrast, some of the same environment activists that criticize the open, consensus-based processes of ASTM and ACI are simultaneously mounting an attack on coal ash in the U.S. Green Building Council’s LEED program – an organization that welcomes them but does not allow consensus participation by product manufacturers.

The EPA’s extensive public comment process during 2010 showed that those who are actually involved in recycling coal ash – from producers to marketers to specifiers to users – are unanimous in the opinion that a “hazardous” designation for coal ash would be disastrous for beneficial use. Proponents of the “hazardous waste” designation are essentially telling these people that they don’t understand their own industry – a recycling industry they have been painstakingly building for over four decades.

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The coal ash beneficial use industry is worth protecting:

- The benefits of using coal ash rather than disposing it are measured in the millions of tons annually – millions of tons of decreased landfill utilization, decreased natural resources production and decreased greenhouse gas emissions from manufacturing the materials coal ash replaces.
- In the decade from 1999 to 2009, our nation successfully recycled 519 million tons of coal ash – some 38 percent of the 1.35 billion tons of coal ash produced. We decreased greenhouse gas emissions by more than 138 million tons during that period through the use of fly ash in concrete products. In 2009 the recycling rate for coal combustion products was 44%.
- In the process, we have created a sustainability focused industry with a direct impact on the economy of more than \$9 billion per year that directly accounts for at least 4,000 “green” jobs.
- Our highways and bridges last longer because of recycled coal ash. Our fields are more productive and shed fewer pollutants because of recycled synthetic gypsum. These are all benefits worth protecting.

I urge you to support the bills that will resolve the regulatory uncertainty EPA has created and remove the risk to one of America’s greatest recycling success stories.

Thank you.