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COAL ASH AS A SOLID WASTE

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

APR 9 1990

Erast Borisoff  
Executive Director  
American Coal Ash Association, Inc.  
1000 16th Street, NW Suite 507  
Washington, DC 20036

Dear Mr. Borisoff:

This letter is written to follow up on the August 2, 1989, meeting between you and other representatives of the American Coal Ash Association (ACAA) and representatives of the Office of Solid Waste concerning the status of coal ash as a "solid waste" (and your June 23, 1989, letter to the EPA administrator). I apologize for the delay in getting this letter to you and hope the delay has not inconvenienced you. In the meeting, you presented substantial evidence of the beneficial uses for coal ash as alternatives to its disposal. We applaud your efforts toward reducing the amount of wastes being land disposed.

As you know, EPA has been amenable to supporting coal ash's beneficial use, as evidenced by publication of the 1983 Guideline for Federal Procurement of Cement and Concrete Containing Fly Ash, and the use of fly ash as a stabilizing medium in setting treatment standards that certain hazardous wastes must meet prior to land disposal.

While EPA is very interested in furthering such beneficial recycling efforts, we do not believe that the designation of coal ash as a "solid waste" is the most important issue: the issue, as we see it, concerns ensuring that recycling activities are conducted using environmentally sound practices. As was stated in the meeting, coal ash is defined as a solid waste in the Resource Conservation and Recovery Act (RCRA); consequently, the change you request is statutory rather than regulatory. EPA's authority is limited to regulatory changes.

You also request that EPA "preclude States and political subdivisions from establishing or continuing in effect any requirement applicable to beneficial use of coal ash which would be inconsistent with any rule prescribed by the Administrator applicable to such beneficial use." This is beyond EPA's authority. For example, Federal regulations promulgated under Subtitle C of RCRA (i.e., hazardous waste regulations) are the minimum hazardous waste management requirements to protect human health and the environment. States that are authorized to implement RCRA Subtitle C programs are able to, and sometimes do exceed Federal requirements in terms of stringency. Even in nonauthorized States, State regulations governing hazardous wastes must be complied with in that State. The regulation of Subtitle D wastes (e.g., coal ash) is primarily managed by State and local governments. Although EPA can encourage States to promulgate regulations that reflect the growing need to encourage beneficial recycling of solid wastes it cannot require a State regulatory Agency to be less stringent.

As RCRA reauthorization is being considered in Congress, waste minimization and recycling are already a strong focus. Should you have information you wish to share with the Congress on the environmentally sound recycling of coal ash and its beneficial uses, the appropriate time to do so is now. I thank you for your interest in the beneficial use of coal ash and encourage your continued marketing of such uses as an alternative to disposal. If you have further questions or need additional information, you should contact Mr. Pat Pesacreta, of my staff, at (202) 382-7915.

Sincerely,

Original Document signed  
"Devereaux Barnes for"

Sylvia K. Lowrance  
Director  
Office of Solid Waste