

The Honorable Rick Boucher
U.S. House of Representatives
2329 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Boucher:

This is in response to your letter of June 17, 1999 to Administrator Browner regarding the Agency's March 1999 *Report to Congress on Wastes from the Combustion of Fossil Fuels*.

In your letter, you first asked EPA to broadly promote the increased utilization of coal ash and to encourage state and federal regulatory programs to avoid applying "waste" regulations to coal ash when it is beneficially used in products. While the Agency's tentative position in the Report to Congress is that coal combustion wastes may not warrant hazardous waste regulation, we are currently evaluating a significant body of public comments on the report. The electric utility industry has submitted comments that are similar to your recommendations, and we will give them careful consideration along with your recommendations as we formulate the regulatory determination. In any event, EPA has been proactive in encouraging the beneficial use of coal combustion materials when designating recycled-content products under section 6002 of RCRA and Executive Order 13101. For example, we have designated cement and concrete containing coal fly ash and ground blast furnace slag as products with recovered materials that procuring agencies must purchase. Similarly, we recently proposed designating flowable fill that contains coal fly ash.

You also asked EPA to look to the states for oversight of agricultural applications and mine placement of coal ash. In developing the report, we have reviewed the current status of oversight by the states for these uses of coal ash. We have found that, presently, state oversight in these areas is somewhat uneven. While a number of states have specific programs or regulations in place that address agricultural uses and mine placement of coal ash, other states have no specific approach for addressing them. Several states have submitted comments to EPA on these issues. We are giving careful consideration to state oversight in these areas as a possible alternative to federal oversight as we conduct our evaluation of the public comments. We are also conferring with the Department of Agriculture on agricultural uses of these materials and will consider the Department's comments and recommendations as we formulate the

RO 14355

regulatory determination.

Finally, you expressed concern with the potential for an extension of the six-month schedule for completion of the regulatory determination. As you know, environmental representatives intend to petition the court for an extension of the public comment period, which in turn could impact the completion date for the regulatory determination. The Agency supports providing commenters additional time to thoroughly review the materials that form the foundation of our Report to Congress and to acquire additional information necessary to assist us in our regulatory determination. We believe that this will afford our agency the opportunity to rely on the best information available in completing our regulatory determination. However, we are not assuming that the court will grant an extension, and are proceeding to complete the regulatory determination by October 1, 1999 based on the best information available to us at this time.

We will place your letter in the docket supporting the regulatory determination. Thank you for your review and comments on the Report to Congress and your recommendations for the regulatory determination. If you have any questions concerning this letter, please have your staff contact Mr. Dennis Ruddy of my staff at (703) 308-8430.

Sincerely,

Elizabeth A. Cotsworth, Acting Director
Office of Solid Waste

RO 14355