

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460**

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Mr. Alex S. Karlin
Morgan, Lewis & Bockius LLP
1800 M St, N. W.
Washington, D.C. 20036-5869

Re: Import of Coal Ash Byproduct

Dear Mr. Karlin:

Thank you for inquiring with EPA about your client's plans to import coal ash byproducts into the United States. This response constitutes confirmation of your understanding that it is permissible to import this coal ash byproduct into the United States under the circumstances you describe in your August 29, 1996 letter.

The coal ash byproduct you describe would consist of "fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal" and would not be mixed with any other material. You indicate that some of this material, once imported, will be used as a cement admixture for fortifying portland cement, and that the remainder would be disposed of in an industrial landfill.

If this is the case, the coal ash would not be regulated as a hazardous waste under the Resource Conservation and Recovery Act ("RCRA"). Specifically, 40 C.F.R. Part 261.4(b)(4) exempts these types of coal ash byproducts from hazardous waste regulation. Pursuant to the Bevill Amendment (§3001(b)(3)(A)(I) and §8002(n)) under RCRA, EPA has specifically studied these types of coal ash byproducts and determined that hazardous waste regulation is not warranted. In addition, these wastes are not subject to the import requirements of RCRA at 40 C.F.R Part 262 Subpart F or new Subpart H, or the notification requirement of 40 C.F.R. Section 264.12. I should note here that as per your request, we are assuming for the purpose of this analysis that the coal ash byproduct is not classified as a hazardous waste under Japanese law regulations. Nor is coal ash byproduct such as you describe covered by the Basel Convention as we interpret it.

Finally, you correctly state that the import of the coal ash would not be subject to the Toxic Substances Control Act ("TSCA") PCB import requirements if neither the coal nor the coal ash would contain 50 ppm PCBs or greater. Nor would this material be subject to the TSCA premanufacture notice (PMN) requirements at 40 CFR 720.30(g) if

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its only commercial purpose is for use by public or private organizations that (1) burn it as a fuel, (2) dispose of it as a waste, including in a landfill or for enriching soil, or (3) extract component chemical substances from it for commercial purposes. Of course, if any new chemical substance is extracted from the byproduct, the new substance would be subject to the PMN requirements. In addition, imported waste that is used as a feedstock would not be excluded from the PMN requirements if it is a new chemical substance.

I hope this letter fulfills your requirements. If you have any questions, please feel free to contact Anna Tschursin of my staff at (703) 308-8805.

Sincerely,

David Bussard, Director
Hazardous Waste Identification Division
Office of Solid Waste

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August 29, 1996

Michael H. Shapiro (M2101)
U.S. Environmental Protection Agency
Director, Office of Solid Waste
401 M Street, S.W.
Washington, D. C. 20460

Re: Import of Coal Ash Byproduct

Dear Mr. Shapiro:

The purpose of this letter is to request that the U.S. Environmental Protection Agency, Office of Solid Waste ("EPA-OSW") confirm our understanding that it is permissible to import coal ash byproduct into the United States under the circumstances described herein.

ECDC Environmental, LC, ("ECDC") and Laidlaw Environmental Services ("Laidlaw") are currently negotiating an arrangement with representatives of major Japanese utility companies whereby coal from the United States would be transported to Japan and burned in Japanese power plants, and then the coal ash byproduct would be returned to the United States. Some of the coal ash byproduct would be used beneficially as cement admixture for fortifying portland cement. The remainder would be disposed of in an industrial landfill owned and operated by ECDC near East Carbon, Utah, a coal-producing region of the State.

The coal ash byproduct would consist of fly ash, bottom ash, slag waste, and flue gas emission control waste generated primarily from the combustion of coal. Coal ash byproduct is not listed as a hazardous waste under the Resource Conservation and Recovery Act ("RCRA"), 40 C.F.R. Part 261 Subpart D. The coal ash byproduct would not exhibit any of the characteristics of hazardousness specified by EPA at 40 C.F.R. Part 261, Subpart C. Neither the coal nor the coal ash byproduct would be mixed with or contain any RCRA listed hazardous waste. Neither the coal nor the coal ash

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would contain polychlorinated biphenyls at levels regulated under the Toxic Substances Control Act ("TSCA").

The State of Utah has evaluated the proposed arrangement and has confirmed that the importation of this coal ash byproduct and disposal of it in the ECDC landfill is a "routine operating matter" fully permissible under State law, RCRA and the ECDC permit. See August 2, 1996 letter from the Executive Director of the Department of Environmental Quality of the State of Utah, Attachment A. EPA Region VIII has confirmed that "EPA has authorized the State of Utah to administer the Federal Hazardous Waste Program under RCRA." See August 1, 1996 letter from EPA Region VIII, Attachment B.

Under these circumstances, we are confident that the proposed arrangement is authorized under, and will comply with, all relevant federal environmental laws and regulations. However, we are also aware that EPA recently amended its regulations regarding the import of certain waste materials under RCRA and TSCA. Given these changes, Laidlaw, ECDC, and their Japanese negotiation partners, seek confirmation from EPA Headquarters that the proposed arrangement is permissible under these federal environmental requirements.

As we understand it, under the United States federal environmental laws and regulations, the proposed import of this coal ash byproduct would be classified as follows:

1. Coal Ash Byproduct Is Not Subject to the Federal Import Regulations of RCRA: The coal ash byproduct would consist of "fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal" and would not be mixed with any other material. As such, the coal ash would not be regulated as a "hazardous waste" under RCRA, see 40 C.F.R. Section 261.4(b)(5). Thus, it would not be subject to the import requirements of RCRA at 40 C.F.R. Part 262 Subpart F or new Subpart H, or the notification requirement of 40 C.F.R. Section 264.12.
2. Coal Ash Byproduct Is Classified As A Green List Waste Under OECD: The coal ash byproduct would be classified as a Green List waste under the Organization for Economic Cooperation and Development (OECD) Council Decision C(92)39/FINAL Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations (OECD Decision C(92)39/FINAL), See 61 Fed. Reg. 16290 (April 12, 1996). This is because the coal ash byproduct would consist of "coal fired power plant fly ash" and "bottom ash and slag tap from coal fired power plants," items GG040 ex 2621 and GG030 ex 2621, respectively on the Green List referenced at 40 C.F.R Section 262.89(e), 61 Fed. Reg. 16314, (April 12, 1996). As a Green List waste under OECD Decision C(92)39/FINAL, the coal ash byproduct is also a Green List Waste for purposes of OECD Decision C(88)90/FINAL.

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3. However, under U.S. environmental regulations, this coal ash byproduct is not a hazardous waste, therefore the U.S. regulations applicable to Green List wastes would not apply to it. See 40 C.F.R. Section 262.80(a).

Coal Ash Byproduct Is Not A Waste Covered By Basel: The coal ash byproduct does not belong to any category contained in Annex I of the Basel Convention and does not possess any of the characteristics contained in Annex III of Basel. In addition, the coal ash byproduct is not considered to be a hazardous waste under the domestic legislation of the United States." Accordingly the coal ash byproduct would not be classified as a "hazardous waste" under the Basel Convention, see 57 Fed. Reg. 20607 (May 13, 1992). In addition, the coal ash byproduct is not on Annex II of Basel (household wastes or residues resulting from the incineration of household wastes) and therefore is not classified as an "other waste" under Basel. Article I paragraph 2. Thus, the coal ash byproduct is not covered by the Basel Convention. Article I, paragraph 1 of Basel. See 57 Fed. Reg. 20607 (May 13, 1992).

4. Import of Coal Ash Byproduct Is Not Prohibited By TSCA: First, since neither the coal nor the coal ash would contain 50 ppm PCBs or greater, the import of the coal ash would not be subject to the TSCA PCB import requirements. See 40 C.F.R. Section 761.93(a)(I), 61 Fed. Reg. 11107 (March 18, 1996). Second, the coal ash byproducts would comply with the TSCA premanufacture notification requirements because (a) the coal ash byproduct would contain only the chemicals and constituents common to such materials, all of which are already on the TSCA inventory, (b) the portion of the coal ash byproduct imported for disposal is exempt from the TSCA PMN requirement and (c) the portion of the coal ash byproduct imported for reuse is a byproduct that is also exempt from the TSCA PMN requirement.

In conclusion, environmental compliance is very important to ECDC and Laidlaw and to the Japanese companies with whom we are discussing this matter. We have examined the situation closely and it is our understanding that the import of the coal ash byproduct for recycling or disposal under the circumstances described herein is proper and permissible under United States federal environmental

1/ The Basel definition of hazardous waste includes any wastes that are "considered to be hazardous wastes by the domestic legislation of the Party of export, import or transit."

Article I, paragraph 1.b. This letter only requests EPA to confirm that the coal ash is not considered to be a hazardous waste under the domestic legislation of the United States. We are not asking EPA to provide us with advice as to the classification of this coal ash byproduct under the domestic legislation of Japan. For purposes of this analysis, please assume that the coal ash byproduct is not classified as a hazardous waste under Japanese

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law. We would greatly appreciate it if you could ask your staff to examine this proposed arrangement and advise us accordingly. Your advice will greatly facilitate our ability to finalize these import arrangements.

Thank you in advance for your consideration and attention.

Sincerely,

Alex S. Karlin

cc: Kent Loest

Brett Hickman, Esq.

Julie Gourley